

FILED

**KEN BENNETT
SECRETARY OF STATE**

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CHAPTER 283

SENATE BILL 1406

AN ACT

AMENDING TITLE 28, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-143; AMENDING SECTIONS 28-7361, 28-7365 AND 28-7366, ARIZONA REVISED STATUTES; RENUMBERING SECTION 28-7367, ARIZONA REVISED STATUTES, AS SECTION 28-7368; AMENDING TITLE 28, CHAPTER 20, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 28-7367; AMENDING SECTIONS 34-101, 34-102, 34-103, 34-602 AND 34-603, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 AND 34-611, ARIZONA REVISED STATUTES, AS SECTIONS 34-606, 34-607, 34-608, 34-609, 34-610, 34-611, 34-612 AND 34-613, RESPECTIVELY; AMENDING TITLE 34, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 34-604 AND 34-605; AMENDING SECTIONS 34-608, 34-610 AND 34-611, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 41-2503, 41-2532, 41-2533, 41-2534, 41-2537, 41-2573, 41-2574 AND 41-2578, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 41-2579 AND 41-2580, ARIZONA REVISED STATUTES, AS SECTIONS 41-2582 AND 41-2583, RESPECTIVELY; AMENDING TITLE 41, CHAPTER 23, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 41-2579 AND 41-2580 AND SECTION 41-2581; AMENDING SECTION 41-2582, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 41-2616, ARIZONA REVISED STATUTES; AMENDING SECTION 41-3506, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, FOURTH SPECIAL SESSION, CHAPTER 3, SECTION 8; AMENDING TITLE 48, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 12; AMENDING SECTION 48-914, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-967; AMENDING SECTIONS 48-2841 AND 48-2851, ARIZONA REVISED STATUTES; AMENDING LAWS 2009, CHAPTER 187, SECTION 62; RELATING TO THE PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 28, chapter 1, article 3, Arizona Revised Statutes,
3 is amended by adding section 28-143, to read:

4 28-143. Heavy and commuter rail; construction; definitions

5 A. FOR EACH HEAVY RAIL OR COMMUTER RAIL PROJECT, THE LICENSED
6 CONTRACTOR PERFORMING THE CONSTRUCTION SHALL PERFORM, WITH THE CONTRACTOR'S
7 OWN ORGANIZATION, CONSTRUCTION WORK ON THE RAIL COMPONENT THAT AMOUNTS TO NOT
8 LESS THAN THIRTY PER CENT OF THE CONTRACT PRICE FOR CONSTRUCTION OF THE RAIL
9 COMPONENT.

10 B. THE THIRTY PER CENT SELF-PERFORMANCE REQUIREMENT OF SUBSECTION A OF
11 THIS SECTION DOES NOT APPLY IF THE CONTRACT PRICE FOR CONSTRUCTION OF THE
12 RAIL COMPONENT IS LESS THAN ONE-HALF OF THE TOTAL CONTRACT PRICE FOR
13 CONSTRUCTION OF THE HEAVY RAIL OR COMMUTER RAIL PROJECT.

14 C. PROJECT ELEMENTS SHALL NOT BE ARTIFICIALLY ADDED TO A PROJECT TO
15 MAKE A PROJECT INTO A HEAVY RAIL OR COMMUTER RAIL PROJECT. PROJECT ELEMENTS
16 SHALL NOT BE ARTIFICIALLY DELETED FROM A PROJECT TO MAKE A PROJECT NOT A
17 HEAVY RAIL OR COMMUTER RAIL PROJECT.

18 D. THE DEPARTMENT MAY INCLUDE IN ANY HEAVY RAIL OR COMMUTER RAIL
19 PROJECT:

20 1. RAIL COMPONENTS.

21 2. STATIONS, MAINTENANCE OR REPAIR FACILITIES, OPERATIONS CENTERS,
22 OFFICE BUILDINGS OR PARKING FACILITIES RELATED TO HEAVY RAIL OR COMMUTER
23 RAIL.

24 E. IF ANY MONIES FOR A HEAVY RAIL OR COMMUTER RAIL PROJECT ARE
25 PROVIDED BY THE FEDERAL GOVERNMENT, ANY REQUIREMENT OR OTHER PROVISION OF
26 THIS SECTION DOES NOT APPLY TO THE HEAVY RAIL OR COMMUTER RAIL PROJECT IF THE
27 REQUIREMENT OR PROVISION IS IN CONFLICT WITH ANY REQUIREMENT OF FEDERAL LAW,
28 REGULATION OR POLICY, THE FEDERAL GOVERNMENT OR THE FEDERAL FUNDING AGENCY.

29 F. FOR THE PURPOSES OF THIS SECTION, IN DETERMINING THE CONTRACT PRICE
30 FOR CONSTRUCTION OF ALL OR ANY PART OF A HEAVY RAIL OR COMMUTER RAIL PROJECT,
31 THE CONTRACT PRICE FOR CONSTRUCTION DOES NOT INCLUDE THE COST OF
32 PRECONSTRUCTION SERVICES OR DESIGN SERVICES, AS DEFINED IN SECTION 28-7361,
33 ANY OTHER RELATED SERVICES OR THE COST TO PROCURE ANY RIGHT-OF-WAY OR OTHER
34 COST OF CONDEMNATION.

35 G. THIS SECTION APPLIES TO THE DESIGN-BID-BUILD, DESIGN-BUILD,
36 CONSTRUCTION-MANAGER-AT-RISK AND JOB-ORDER-CONTRACTING PROJECT DELIVERY
37 METHODS.

38 H. FOR THE PURPOSES OF THIS SECTION:

39 1. "HEAVY RAIL OR COMMUTER RAIL PROJECT" MEANS A DEPARTMENT FACILITIES
40 PROJECT FOR HEAVY RAIL OR COMMUTER RAIL, INCLUDING ANY RAIL COMPONENT AND ANY
41 STATIONS, MAINTENANCE OR REPAIR FACILITIES, OPERATIONS CENTERS, OFFICE
42 BUILDINGS OR PARKING FACILITIES RELATING TO HEAVY RAIL OR COMMUTER RAIL.

43 2. "RAIL COMPONENT" MEANS THE PART OF A HEAVY RAIL OR COMMUTER RAIL
44 PROJECT RELATED TO THE TRACK AND OPERATION OF TRAINS ON THE TRACK, INCLUDING
45 THE RAILS, TIES, TRACK BED, SUBGRADE, EXCAVATIONS, DIRT, ROCK AND OTHER

1 MATERIALS REMOVAL AND BUILDUP, SIGNALS AND COMMUNICATIONS EQUIPMENT, HIGHWAY
2 CROSSINGS AND CROSSING GATES AND SIGNALS. RAIL COMPONENT DOES NOT INCLUDE
3 ANY STATIONS, MAINTENANCE OR REPAIR FACILITIES, OPERATIONS CENTERS, OFFICE
4 BUILDINGS OR PARKING FACILITIES.

5 Sec. 2. Section 28-7361, Arizona Revised Statutes, is amended to read:
6 28-7361. Definitions

7 In this article, unless the context otherwise requires:

8 1. "Architect services" means those professional architect services
9 that are within the scope of architectural practice as provided in title 32,
10 chapter 1.

11 2. "Construction-manager-at-risk" means a project delivery method in
12 which:

13 (a) There is a contract for construction services that is separate
14 from the contract for design services, EXCEPT THAT INSTEAD OF A SINGLE
15 CONTRACT FOR CONSTRUCTION SERVICES, THE DEPARTMENT MAY ELECT SEPARATE
16 CONTRACTS FOR PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR
17 CONSTRUCTION DURING THE CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION
18 SERVICES.

19 (b) Design services are performed under a separate design services
20 contract, except that as to bridges and other transportation facilities the
21 department may perform with its own employees or force account preliminary
22 design and either:

23 (i) In the case of bridges only, all design services up to final
24 design.

25 (ii) In the case of other transportation facilities, up to twenty per
26 cent of the design work.

27 (c) The contract for construction services may be entered into at the
28 same time as the design services are commenced or at a later time.

29 (d) Design and construction of the project may be ~~in sequential phases~~
30 ~~or concurrent phases~~. EITHER:

31 (i) SEQUENTIAL WITH THE ENTIRE DESIGN COMPLETE BEFORE CONSTRUCTION
32 COMMENCES.

33 (ii) CONCURRENT WITH THE DESIGN PRODUCED IN TWO OR MORE PHASES AND
34 CONSTRUCTION OF SOME PHASES COMMENCING BEFORE THE ENTIRE DESIGN IS COMPLETE.

35 (e) Finance services, maintenance services, operations services,
36 preconstruction services and other related services may be included.

37 3. "Construction services" means either of the following for
38 construction-manager-at-risk and job-order-contracting project delivery
39 methods:

40 (a) Construction, excluding services, through the
41 construction-manager-at-risk or job-order-contracting project delivery
42 methods.

43 (b) A combination of construction and, as elected by the department,
44 one or more related services, such as finance services, maintenance services,
45 operations services, design services and preconstruction services, as those

1 services are authorized in the definition of construction-manager-at-risk or
2 job-order-contracting.

3 4. "Contract" means all types of department agreements, regardless of
4 what they are called, for procurements pursuant to this article.

5 5. "Contractor" means any person who has a contract with the
6 department.

7 6. "Design-build" means the process of entering into and managing a
8 contract between the department and another party in which the other party
9 agrees to both design and build a highway, a structure, a facility or other
10 items specified in the contract.

11 7. "Design-builder" means any individual, partnership, joint venture,
12 corporation or other legal entity that is appropriately licensed in this
13 state and that furnishes the necessary design services, in addition to
14 construction of the work, whether by itself or through subcontracts,
15 including subcontracts for architectural and engineering services.

16 8. "Design services" means architect services, engineer services or
17 landscape architect services.

18 9. "Emergency" means an immediate threat to public health, welfare or
19 safety caused by flood, earthquake, hurricane, tornado, explosion, fire or
20 other catastrophe such that compliance with normal bidding procedures for
21 repair or reconstruction of transportation facilities would be impracticable
22 or contrary to the public interest.

23 10. "Engineer services" means those professional engineer services that
24 are within the scope of engineering practice as provided in title 32,
25 chapter 1.

26 11. "Finance services" means financing for a construction services
27 project.

28 12. "Job-order-contracting" means a project delivery method in which:

29 (a) The contract is for indefinite quantities of construction and, at
30 the election of the department, may or may not include a guaranteed minimum
31 amount of work.

32 (b) The construction to be performed is specified in job orders issued
33 during the contract.

34 (c) Finance services, maintenance services, operations services,
35 preconstruction services, design services and other related services may be
36 included.

37 13. "Landscape architect services" means those professional landscape
38 architect services that are within the scope of landscape architectural
39 practice as provided in title 32, chapter 1.

40 14. "Maintenance services" means routine maintenance, repair and
41 replacement of existing facilities, structures, buildings or real property.

42 15. "Operations services" means routine operation of existing
43 facilities, structures, buildings or real property.

1 16. "Person" means any corporation, business, individual, union,
2 committee, club, other organization or group of individuals.

3 17. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
4 ACTIVITIES during the design phase.

5 18. "Specific single project" means a project that is constructed at a
6 single location, at a common location or for a common purpose.

7 19. "Subcontractor" means a person who contracts to perform work or
8 render service to a contractor or to another subcontractor as a part of a
9 contract with the department.

10 Sec. 3. Section 28-7365, Arizona Revised Statutes, is amended to read:
11 28-7365. Design-build; two-phase solicitation

12 A. If the department determines that the design-build method of
13 project delivery is appropriate, the department shall establish a two-phase
14 procedure for awarding the design-build contract. The department shall limit
15 each solicitation for a design-build contract to a specific single project.

16 B. During phase one, and before solicitation, the director shall
17 appoint a selection team of at least three persons. At least one-half of the
18 selection team shall be architects or engineers who are registered pursuant
19 to section 32-121. The selection team members may be either department
20 employees or outside consultants. The selection team shall also include at
21 least one person who is a senior management employee of a licensed contractor
22 who is not involved in the project. Any architect or engineer who is serving
23 on the selection team and who is not a department employee shall not be
24 otherwise involved in the project. The department shall prepare documents
25 for a request for qualifications.

26 C. The request for qualifications shall include all of the following:

27 1. The minimum qualifications of the design-builder.

28 2. A scope of work statement and schedule.

29 3. Documents defining the project requirements.

30 4. The form of contract to be awarded.

31 5. The selection criteria for compiling a short list and the number of
32 firms to be included on the short list. At least three but not more than
33 five firms shall be included on the short list.

34 6. A description of the phase two requirements and subsequent
35 management needed to bring the project to completion.

36 7. The maximum time allowable for design and construction.

37 8. The department's estimated cost of design and construction.

38 D. The selection team shall evaluate the design-build qualifications
39 of responding firms and shall compile a short list of firms in accordance
40 with technical and qualifications-based criteria. The number of firms on the
41 short list shall be the number of firms specified in the request for
42 qualifications, except that, if a smaller number of firms responds to the
43 solicitation or if one or more of the firms on the short list drop out so
44 that only two firms remain on the short list, the selection team may proceed
45 with the selection process with the remaining firms if at least two firms

1 remain or the ~~selection team~~ DEPARTMENT may readvertise as the ~~selection team~~
2 DEPARTMENT deems necessary.

3 E. During phase two, the department shall issue a request for
4 proposals to the design-builders on the short list. The request shall
5 include:

6 1. The scope of work, including programmatic, performance and
7 technical requirements, conceptual design, specifications and functional and
8 operational elements for the delivery of the completed project, which shall
9 all be prepared by an architect or engineer, as appropriate, who is
10 registered pursuant to section 32-121.

11 2. A description of the qualifications required of the design-builder
12 and the selection criteria, including the weight or relative order, or both,
13 of each criterion.

14 3. Copies of the contract documents that the successful proposer will
15 be expected to sign.

16 4. The maximum time allowable for design and construction.

17 5. The department's estimated cost of design and construction.

18 6. The requirement that a proposal be segmented into two parts, a
19 technical proposal and a price proposal. Each proposal shall be in a
20 separately sealed, clearly identified package and shall include the date and
21 time of the submittal deadline. The technical proposal shall include a
22 schedule, schematic design plans and specifications, technical reports,
23 calculations, permit requirements, applicable development fees and other data
24 requested in the request for proposals. The price proposal shall contain all
25 design, construction, engineering, inspection and construction costs of the
26 proposed project.

27 7. The date, time and location of the public opening of the sealed
28 price proposals.

29 8. Other information relevant to the project.

30 F. If stated in the request for proposals, in order to inform each
31 firm whether the firm's concept is responsive to the request for proposals,
32 the department may enter into a separate confidential discussion with each
33 firm on the short list to discuss alternative technical concepts that the
34 firm may propose.

35 G. The department shall proceed as follows:

36 1. The selection team shall review the technical proposals and score
37 the technical proposals using the selection criteria in the request for
38 proposals. The technical review team shall then submit a technical proposal
39 score for each design-builder to the department. The technical review team
40 shall reject any proposal it deems to be nonresponsive.

41 2. The department shall announce the technical proposal score for each
42 design-builder, shall publicly open the sealed price proposals and shall
43 divide each design-builder's price by the score that the selection team has
44 given to it to obtain an adjusted score. The design-builder selected shall

1 be that responsive and responsible design-builder whose adjusted score is the
2 lowest.

3 3. If a time factor is included with the selection criteria in the
4 request for proposals package, the department may also adjust the bids using
5 a value of the time factor established by the department. The value of the
6 time factor shall be a value per day. The adjustment shall be based on the
7 total time value. The total time value is the design-builder's proposed
8 number of days to complete the project multiplied by the factor. The time
9 adjusted price is the total time value plus the bid amount. This adjustment
10 shall be used for selection purposes only and shall not affect the
11 department's liquidated damages schedule or incentive and disincentive
12 program. An adjusted score shall then be obtained by dividing each
13 design-builder's time adjusted price by the score given by the technical
14 review team. The department shall select the responsive and responsible
15 design-builder whose adjusted score is the lowest.

16 4. Unless all proposals are rejected, the board shall award the
17 contract to the responsive and responsible design-builder with the lowest
18 adjusted score. The board reserves the right to reject all proposals.

19 5. The department shall award a stipulated fee equal to two-tenths of
20 one per cent of the department's estimated cost of design and construction to
21 each short list responsible proposer who provides a responsive, but
22 unsuccessful proposal. If the department does not award a contract, all
23 responsive proposers shall receive the stipulated fee. If the department
24 cancels the contract before reviewing the technical proposals, the department
25 shall award each design-builder on the selected short list a stipulated fee
26 equal to two-tenths of one per cent of the department's estimated cost of
27 design and construction. The department shall pay the stipulated fee to each
28 proposer within ninety days after the award of the contract or the decision
29 not to award a contract. In consideration for paying the stipulated fee, the
30 department may use any ideas or information contained in the proposals in
31 connection with any contract awarded for the project, or in connection with a
32 subsequent procurement, without any obligation to pay any additional
33 compensation to the unsuccessful proposers. Notwithstanding the other
34 provisions of this paragraph, an unsuccessful short list proposer may elect
35 to waive the stipulated fee. If an unsuccessful short list proposer elects
36 to waive the stipulated fee, the department may not use ideas and information
37 contained in the proposer's proposal, except that this restriction does not
38 prevent the department from using any idea or information if the idea or
39 information is also included in a proposal of a short list proposer that
40 accepts the stipulated fee.

41 Sec. 4. Section 28-7366, Arizona Revised Statutes, is amended to read:

42 28-7366. Construction-manager-at-risk construction services and
43 job-order-contracting construction services

44 A. The department may procure the following services pursuant to this
45 section:

1 1. Construction-manager-at-risk construction services.
2 2. Job-order-contracting construction services.
3 B. The department shall provide notice of each procurement of
4 construction services prescribed in this section and shall award contracts on
5 the basis of demonstrated competence and qualifications for the type of
6 construction services pursuant to the procedures prescribed in this section.
7 C. In the procurement of construction services pursuant to this
8 section:
9 1. The department shall issue a request for qualifications for each
10 contract and publish notice of the request for qualifications in the same
11 manner as provided in section 28-6923. The request for qualifications shall:
12 (a) Include the number of persons or firms to be included on the final
13 list. At least three but not more than five persons or firms shall be on the
14 final list.
15 (b) State the criteria to be used by the selection team to select the
16 person or firm to perform the construction services. The request for
17 qualifications shall also state in a manner determined by the department the
18 relative weight of the selection criteria.
19 (c) If the department will hold interviews as part of the selection
20 process, state that interviews shall be held with AND THE NUMBER OF PERSONS
21 OR FIRMS TO BE INTERVIEWED, WHICH SHALL BE at least the number of persons or
22 firms to be included in the final list but not more than the number of
23 persons or firms to be included in the final list plus two.
24 2. For each request for qualifications, the department shall initiate
25 a selection team pursuant to section 28-7365, subsection B. A person who is
26 a member of a selection team shall not be a contractor under the contract or
27 provide construction, construction services, materials or services under the
28 contract. The selection team shall:
29 (a) Evaluate the statements of qualifications and performance data
30 that are submitted in response to the department's request for
31 qualifications.
32 (b) If determined by the department and included by the department in
33 the request for qualifications, conduct interviews with the number of persons
34 or firms to be interviewed as stated in the request for qualifications
35 regarding the contract and the relative methods of approach for furnishing
36 the required construction services.
37 (c) After any interviews OR IF INTERVIEWS ARE NOT HELD, in order of
38 preference, based on the criteria and the weighting of criteria established
39 and published by the department and included in the request for
40 qualifications, select a final list for the contract of persons or firms the
41 selection team deems to be the most qualified to provide the construction
42 services and, in the case of a contract that will be negotiated under
43 subsection E of this section, rank the persons or firms on the final list in
44 order of preference. The selection team shall base the selection of the
45 final list and the order of preference on demonstrated competence and

1 qualifications only. The number of persons or firms on the final list shall
2 be the number of persons or firms specified in the request for
3 qualifications, except that:

4 (i) If a smaller number of responsive and responsible persons or firms
5 respond to the solicitation, the department may have the selection team
6 proceed with the selection process, including interviews and the final list,
7 with the remaining persons or firms if at least two persons or firms remain
8 or the department may readvertise pursuant to this subsection as the
9 department deems necessary or appropriate.

10 (ii) If only one responsive and responsible person or firm responds to
11 a solicitation for a contract to be negotiated pursuant to subsection E of
12 this section, the department may proceed with only one person or firm in the
13 selection process and may award the contract to a single person or firm if
14 the department determines in writing that the fee negotiated pursuant to
15 subsection E of this section is fair and reasonable and that either other
16 prospective persons or firms had reasonable opportunity to respond or there
17 is not adequate time for a resolicitation.

18 (iii) If a person or firm on the final list withdraws or is removed
19 from the selection process and the selection team determines that it is in
20 the best interest of the department, the selection team may replace that
21 person or firm with the person or firm that submitted qualifications and that
22 is selected by the selection team as the next most qualified.

23 (d) Base the selection of the final list and order of preference on
24 the final list on demonstrated competence and qualifications only.

25 3. The department and the selection team shall not request or consider
26 fees, price, man-hours or any other cost information at any point in the
27 selection process under this subsection or subsection D of this section,
28 including the selection of the persons or firms to be interviewed, the
29 selection of the persons or firms to be on the final list, in determining the
30 order of preference of persons or firms on the final list or for any other
31 purpose in the selection process.

32 4. For construction-manager-at-risk construction services, the
33 contract under a request for qualifications solicitation is limited to a
34 specific single project.

35 D. The department shall award a contract for construction services to
36 one of the persons or firms on the final list prepared pursuant to subsection
37 C of this section as provided in subsection E or F of this section, except
38 that, if fewer than the number of persons or firms on the final list respond
39 to the request for proposals pursuant to subsection F of this section but at
40 least two persons or firms on the final list submit responsive proposals, or
41 if one or more of the persons or firms on the final list drop out of the
42 selection process pursuant to subsection E or F of this section:

43 1. If there are three or more remaining persons or firms, the
44 department shall proceed with the selection process.

1 2. If there are only two remaining persons or firms, as the department
2 deems necessary and appropriate, the department may proceed with the
3 selection process with the two persons or firms or may terminate the
4 selection process and may readvertise pursuant to subsection C of this
5 section.

6 3. If there is only one remaining person or firm, the department may
7 award the contract to a single person or firm PURSUANT TO SUBSECTION E OF
8 THIS SECTION if the department determines in writing that the fee negotiated
9 pursuant to subsection E of this section is fair and reasonable and that
10 either other prospective persons or firms had reasonable opportunity to
11 respond or there is not adequate time for a resolicitation.

12 E. For the single contract included in the request for qualifications,
13 the department shall enter into negotiations for the contract with the
14 highest qualified person or firm on the final list for the construction
15 services. The negotiations shall include consideration of compensation and
16 other contract terms that the department determines to be fair and reasonable
17 to the department. In making this decision, the department shall take into
18 account the estimated value, the scope, the complexity and the nature of the
19 construction services to be rendered. If the department is not able to
20 negotiate a satisfactory contract with the highest qualified person or firm
21 on the final list at compensation and on other contract terms the department
22 determines to be fair and reasonable, the department shall formally terminate
23 negotiations with that person or firm. The department may undertake
24 negotiations with the next most qualified person or firm on the final list in
25 sequence until an agreement is reached or a determination is made to reject
26 all persons or firms on the final list. If a contract for construction
27 services is entered into pursuant to this subsection:

28 1. If the contract is for construction-manager-at-risk construction
29 services and includes preconstruction services by the contractor, the
30 department shall enter into a written contract with the contractor for
31 preconstruction services under which the department shall pay the contractor
32 a fee for preconstruction services in an amount agreed by the department and
33 the contractor, and the department shall not request or obtain a fixed price
34 or a guaranteed maximum price for the construction from the contractor or
35 enter into a construction contract with the contractor until after the
36 department has entered into the written contract for preconstruction services
37 and a preconstruction services fee.

38 2. Construction shall not commence until the department and contractor
39 agree in writing on either a fixed price that the department will pay for the
40 construction to be commenced or a guaranteed maximum price for the
41 construction to be commenced. THE CONSTRUCTION TO BE COMMENCED MAY BE THE
42 ENTIRE PROJECT OR MAY BE ONE OR MORE PHASED PARTS OF THE PROJECT.

43 F. As an alternative to subsection E of this section, the department
44 may award job-order-contracting construction services as follows:

1 1. The department shall use the selection team that is appointed for
2 the request for qualifications pursuant to subsection C of this section.

3 2. The department shall issue a request for proposals to the persons
4 or firms on the final list that is developed pursuant to subsection C of this
5 section.

6 3. For job-order-contracting construction services, the request for
7 proposals shall include:

8 (a) The department's project schedule and project final design and
9 construction budget or life cycle budget for a procurement that includes
10 maintenance services or operations services.

11 (b) A statement that the contract will be awarded to the offeror whose
12 proposal receives the highest number of points under a scoring method.

13 (c) A description of the scoring method, including a list of the
14 factors in the scoring method and the number of points allocated to each
15 factor.

16 (d) A requirement that each offeror separately submit a technical
17 proposal and a price proposal and that the offeror's entire proposal be
18 responsive to the requirements in the request for proposals.

19 (e) A statement that in applying the scoring method the selection team
20 will separately evaluate the technical proposal and the price proposal and
21 will evaluate and score the technical proposal before opening the price
22 proposal.

23 (f) If the department conducts discussions pursuant to paragraph 5 of
24 this subsection, a statement that discussions will be held and a requirement
25 that each offeror submit a preliminary technical proposal before the
26 discussions are held.

27 4. If the department determines to conduct discussions pursuant to
28 paragraph 5 of this subsection, each offeror shall submit a preliminary
29 technical proposal to the department before those discussions are held.

30 5. If determined by the department and included by the department in
31 the request for proposals, the selection team shall conduct discussions with
32 ~~all persons or firms~~ OFFERORS that submit preliminary technical proposals.
33 Discussions shall be for the purpose of clarification to ~~assure~~ ENSURE full
34 understanding of, and responsiveness to, the solicitation requirements. The
35 department shall accord fair treatment to offerors with respect to any
36 opportunity for discussion and for clarification by the owner. Revision of
37 preliminary technical proposals shall be permitted after submission of
38 preliminary technical proposals and before award for the purpose of obtaining
39 the best and final proposals. In conducting any discussions, information
40 derived from proposals submitted by competing offerors shall not be disclosed
41 to other competing offerors.

42 6. After completion of any discussions pursuant to paragraph 5 of this
43 subsection or if no discussions are held, each offeror shall separately
44 submit the offeror's final technical proposal and the offeror's price
45 proposal.

1 7. Before opening any price proposal, the selection team shall open
2 the final technical proposals, evaluate the final technical proposals and
3 score the final technical proposals using the scoring method in the request
4 for proposals. No other factors or criteria may be used in the evaluation
5 and scoring.

6 8. After completion of the evaluation and scoring of all final
7 technical proposals, the selection team shall open the price proposals,
8 evaluate the price proposals, score the price proposals and complete the
9 scoring of the entire proposals using the scoring method in the request for
10 proposals. No other factors or criteria may be used in the evaluation and
11 scoring.

12 9. The department shall award the contract to the responsive and
13 responsible offeror whose proposal receives the highest score under the
14 method of scoring in the request for proposals. No other factors or criteria
15 may be used in the evaluation.

16 10. The contract file shall contain the basis on which the award is
17 made.

18 G. Until an award and execution of a contract by the department, only
19 the name of each person or firm on the final list developed pursuant to
20 subsection C of this section may be made available to the public. All other
21 information received by the department in response to the request for
22 qualifications or contained in the proposals is confidential in order to
23 avoid disclosure of the contents that may be prejudicial to competing
24 offerors during the selection process. The department shall open the
25 proposals to public inspection after the contract is awarded and the
26 department has executed the contract. To the extent that the offeror
27 designates and the department concurs, trade secrets and other proprietary
28 data contained in a proposal remain confidential.

29 H. The department may cancel a request for qualifications or a request
30 for proposals or reject in whole or in part any or all proposals as specified
31 in the solicitation if it is in the best interest of the department. The
32 department shall make the reasons for cancellation or rejection part of the
33 contract file.

34 I. Notwithstanding any other law:

35 1. The contractor for job-order-contracting construction services is
36 not required to be registered to perform design services pursuant to title
37 32, chapter 1 if the person or firm actually performing the design services
38 on behalf of the contractor is appropriately registered.

39 2. The contractor for construction-manager-at-risk CONSTRUCTION
40 SERVICES or job-order-contracting construction services shall be licensed to
41 perform construction pursuant to title 32, chapter 10.

42 3. For each project under a construction-manager-at-risk construction
43 services contract, the licensed contractor performing the contract shall
44 perform, with the contractor's own organization, construction work that
45 amounts to not less than forty per cent of the total contract price for

1 construction. For the purposes of this paragraph, the total contract price
2 for construction does not include the cost of preconstruction services,
3 design services or any other related services or the cost to procure any
4 right-of-way or other cost of condemnation.

5 ~~4. There shall be a separate request for qualifications under~~
6 ~~subsection C of this section for each contract for~~
7 ~~construction manager at risk construction services or job order contracting~~
8 ~~construction services.~~

9 4. EACH PROCUREMENT AND EACH REQUEST FOR QUALIFICATIONS PURSUANT TO
10 THIS SECTION IS LIMITED TO A SINGLE CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK
11 CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES. THIS
12 RESTRICTION DOES NOT AFFECT OR IMPAIR THE DEPARTMENT'S ABILITY TO PROCURE
13 MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN A
14 SINGLE PROCUREMENT USING A SINGLE REQUEST FOR QUALIFICATIONS PURSUANT TO
15 SECTION 28-7367.

16 5. The department shall not procure any construction services
17 using the construction-manager-at-risk construction services or
18 job-order-contracting construction services method of project delivery after
19 December 31, 2025. For the purposes of this paragraph, the department
20 procures construction services when the department solicits the contract for
21 construction services. If the department solicits a contract for
22 construction services on or before December 31, 2025, the contract may be
23 executed and construction services under the contract may be rendered in
24 whole or in part after December 31, 2025.

25 J. For job-order-contracting construction services only:

26 1. The maximum dollar amount of an individual job order shall be one
27 million dollars or such higher or lower amount prescribed by the department.
28 Requirements shall not be artificially divided or fragmented in order to
29 constitute a job order that satisfies this requirement.

30 2. If the contractor subcontracts or intends to subcontract any of the
31 work under a job order and if the job-order-construction services contract
32 includes descriptions of standard individual tasks, standard unit prices for
33 standard individual tasks and pricing of job orders based on the number of
34 units of standard individual tasks in the job order:

35 (a) The contractor has a duty to deliver promptly to each
36 subcontractor invited to bid a coefficient to the contractor to do all or
37 part of the work under one or more job orders:

38 (i) A copy of the descriptions of all standard individual tasks on
39 which the subcontractor is invited to bid.

40 (ii) A copy of the standard unit prices for the individual tasks on
41 which the subcontractor is invited to bid.

42 (b) If not previously delivered to the subcontractor, the contractor
43 has a duty to deliver promptly the following to each subcontractor invited to
44 or that has agreed to do any of the work included in any job order:

1 (i) A copy of the description of each standard individual task that is
2 included in the job order and that the subcontractor is invited to perform.

3 (ii) The number of units of each standard individual task that is
4 included in the job order and that the subcontractor is invited to perform.

5 (iii) The standard unit price for each standard individual task that
6 is included in the job order and that the subcontractor is invited to
7 perform.

8 K. Notwithstanding anything to the contrary in this title, the
9 department shall not enter into a contract as contractor to provide
10 construction-manager-at-risk construction services or job-order-contracting
11 construction services.

12 L. Each contract for construction-manager-at-risk construction
13 services or job-order-contracting construction services shall contain a
14 description of each separate location at which the construction will be
15 performed and a requirement that the contractor include in each of the
16 contractor subcontracts the same location description. The contractor shall
17 include in each subcontract a description of each separate location at which
18 the construction will be performed.

19 M. Except as otherwise provided in this section, sections 28-6923 and
20 28-6924, relating to bid, performance and payment bonds, change orders,
21 progress payments, contract retention, definitions and authority to award
22 contracts, apply to department construction-manager-at-risk and
23 job-order-contracting contracts for transportation facilities pursuant to
24 this article.

25 Sec. 5. Renumber

26 Section 28-7367, Arizona Revised Statutes, is renumbered as section
27 28-7368.

28 Sec. 6. Title 28, chapter 20, article 13, Arizona Revised Statutes, is
29 amended by adding a new section 28-7367, to read:

30 28-7367. Multiple contracts for the same job-order-contracting
31 construction services to be awarded to separate
32 persons or firms in a single procurement; contract
33 requirements

34 A. THE DEPARTMENT MAY PROCURE IN A SINGLE PROCUREMENT MULTIPLE
35 CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE
36 AWARDED TO SEPARATE PERSONS OR FIRMS PURSUANT TO THIS SECTION.

37 B. THE DEPARTMENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT OF MULTIPLE
38 CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE
39 AWARDED TO SEPARATE PERSONS OR FIRMS PRESCRIBED IN THIS SECTION AND SHALL
40 AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS
41 FOR THE TYPE OF JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES PURSUANT TO THE
42 PROCEDURES PRESCRIBED IN THIS SECTION.

43 C. IN THE PROCUREMENT OF MULTIPLE CONTRACTS FOR THE SAME
44 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
45 OR FIRMS PURSUANT TO THIS SECTION:

1 1. THE DEPARTMENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH
2 PROCUREMENT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS IN THE SAME
3 MANNER AS PROVIDED IN SECTION 28-6923. THE REQUEST FOR QUALIFICATIONS SHALL:

4 (a) STATE THAT MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING
5 CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT
6 MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE
7 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
8 A SEPARATE PERSON OR FIRM.

9 (b) INCLUDE THE NUMBER OF PERSONS OR FIRMS TO BE INCLUDED ON THE FINAL
10 LIST. THE NUMBER ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS THAT MAY
11 OR WILL BE AWARDED PLUS A NUMBER THAT IS DETERMINED BY THE DEPARTMENT AND
12 THAT IS NOT MORE THAN FIVE.

13 (c) STATE THE CRITERIA TO BE USED BY THE SELECTION TEAM TO SELECT THE
14 PERSONS OR FIRMS TO PERFORM THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.
15 THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE IN A MANNER DETERMINED BY THE
16 DEPARTMENT THE RELATIVE WEIGHT OF THE SELECTION CRITERIA.

17 (d) IF THE DEPARTMENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
18 PROCESS, STATE THAT INTERVIEWS SHALL BE HELD WITH A NUMBER OF PERSONS OR
19 FIRMS EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED PLUS A
20 NUMBER THAT IS DETERMINED BY THE DEPARTMENT AND THAT IS NOT MORE THAN FIVE.

21 2. FOR EACH REQUEST FOR QUALIFICATIONS, THE DEPARTMENT SHALL INITIATE
22 A SELECTION TEAM PURSUANT TO SECTION 28-7365, SUBSECTION B. A PERSON WHO IS
23 A MEMBER OF A SELECTION TEAM SHALL NOT BE A CONTRACTOR UNDER THE CONTRACT OR
24 PROVIDE CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR SERVICES UNDER THE
25 CONTRACT. THE SELECTION TEAM SHALL:

26 (a) EVALUATE THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA
27 THAT ARE SUBMITTED IN RESPONSE TO THE DEPARTMENT'S REQUEST FOR
28 QUALIFICATIONS.

29 (b) IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
30 THE REQUEST FOR QUALIFICATIONS, CONDUCT INTERVIEWS WITH THE NUMBER OF PERSONS
31 OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR QUALIFICATIONS
32 REGARDING THE CONTRACT AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING
33 THE REQUIRED CONSTRUCTION SERVICES.

34 (c) AFTER ANY INTERVIEWS OR IF INTERVIEWS ARE NOT HELD, IN ORDER OF
35 PREFERENCE, BASED ON THE CRITERIA AND THE WEIGHTING OF CRITERIA ESTABLISHED
36 AND PUBLISHED BY THE DEPARTMENT AND INCLUDED IN THE REQUEST FOR
37 QUALIFICATIONS, SELECT THE FINAL LIST OF PERSONS OR FIRMS THE SELECTION TEAM
38 DEEMS TO BE THE MOST QUALIFIED TO PROVIDE THE CONSTRUCTION SERVICES AND, IN
39 THE CASE OF A CONTRACT THAT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
40 SECTION, RANK THE PERSONS OR FIRMS ON THE FINAL LIST IN ORDER OF PREFERENCE.
41 THE SELECTION TEAM SHALL BASE THE SELECTION OF THE FINAL LIST AND THE ORDER
42 OF PREFERENCE ONLY ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS. THE NUMBER
43 OF PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF PERSONS OR FIRMS
44 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS, EXCEPT THAT:

1 (i) IF A SMALLER NUMBER OF RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS
2 RESPOND TO THE SOLICITATION, THE DEPARTMENT MAY HAVE THE SELECTION TEAM
3 PROCEED WITH THE SELECTION PROCESS, INCLUDING INTERVIEWS AND THE FINAL LIST,
4 WITH THE REMAINING PERSONS OR FIRMS IF AT LEAST TWO PERSONS OR FIRMS REMAIN
5 OR THE DEPARTMENT MAY READVERTISE PURSUANT TO THIS SUBSECTION AS THE
6 DEPARTMENT DEEMS NECESSARY OR APPROPRIATE.

7 (ii) IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS TO
8 A SOLICITATION FOR A CONTRACT TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF
9 THIS SECTION, THE DEPARTMENT MAY PROCEED WITH ONLY ONE PERSON OR FIRM IN THE
10 SELECTION PROCESS AND MAY AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF
11 THE DEPARTMENT DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO
12 SUBSECTION E OF THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER
13 PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE
14 IS NOT ADEQUATE TIME FOR A RESOLICITATION.

15 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
16 FROM THE SELECTION PROCESS AND THE SELECTION TEAM DETERMINES THAT IT IS IN
17 THE BEST INTEREST OF THE DEPARTMENT, THE SELECTION TEAM MAY REPLACE THAT
18 PERSON OR FIRM WITH THE PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND THAT
19 IS SELECTED BY THE SELECTION TEAM AS THE NEXT MOST QUALIFIED.

20 (d) BASE THE SELECTION OF THE FINAL LIST AND ORDER OF PREFERENCE ON
21 THE FINAL LIST ONLY ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS.

22 3. THE DEPARTMENT AND THE SELECTION TEAM SHALL NOT REQUEST OR CONSIDER
23 FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN THE
24 SELECTION PROCESS UNDER THIS SUBSECTION OR SUBSECTION D OF THIS SECTION,
25 INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED, THE
26 SELECTION OF THE PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE
27 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
28 PURPOSE IN THE SELECTION PROCESS.

29 D. THE DEPARTMENT SHALL AWARD THE MULTIPLE CONTRACTS FOR
30 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO THE SEPARATE PERSONS OR FIRMS
31 ON THE FINAL LIST PREPARED PURSUANT TO SUBSECTION C OF THIS SECTION AS
32 PROVIDED IN SUBSECTION E OR F OF THIS SECTION, EXCEPT THAT, IF FEWER THAN THE
33 NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST RESPOND TO THE REQUEST FOR
34 PROPOSALS PURSUANT TO SUBSECTION F OF THIS SECTION BUT AT LEAST TWO PERSONS
35 OR FIRMS ON THE FINAL LIST SUBMIT RESPONSIVE PROPOSALS, OR IF ONE OR MORE OF
36 THE PERSONS OR FIRMS ON THE FINAL LIST DROP OUT OF THE SELECTION PROCESS
37 PURSUANT TO SUBSECTION E OR F OF THIS SECTION:

38 1. IF THERE ARE THREE OR MORE REMAINING PERSONS OR FIRMS, THE
39 DEPARTMENT SHALL PROCEED WITH THE SELECTION PROCESS.

40 2. IF THERE ARE ONLY TWO REMAINING PERSONS OR FIRMS, AS THE DEPARTMENT
41 DEEMS NECESSARY AND APPROPRIATE, THE DEPARTMENT MAY PROCEED WITH THE
42 SELECTION PROCESS WITH THE TWO PERSONS OR FIRMS OR MAY TERMINATE THE
43 SELECTION PROCESS AND MAY READVERTISE PURSUANT TO SUBSECTION C OF THIS
44 SECTION.

1 3. IF THERE IS ONLY ONE REMAINING PERSON OR FIRM, THE DEPARTMENT MAY
2 AWARD ONE OF THE MULTIPLE CONTRACTS TO THE SINGLE PERSON OR FIRM PURSUANT TO
3 SUBSECTION E OF THIS SECTION IF THE DEPARTMENT DETERMINES IN WRITING THAT THE
4 FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
5 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD A
6 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
7 RESOLICITATION.

8 E. FOR MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING
9 CONSTRUCTION SERVICES INCLUDED IN THE REQUEST FOR QUALIFICATIONS, THE
10 DEPARTMENT SHALL ENTER INTO NEGOTIATIONS WITH THE NUMBER OF THE HIGHEST
11 QUALIFIED PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS
12 THAT MAY OR WILL BE AWARDED. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
13 COMPENSATION AND OTHER CONTRACT TERMS THAT THE DEPARTMENT DETERMINES TO BE
14 FAIR AND REASONABLE TO THE DEPARTMENT. IN MAKING THIS DECISION, THE
15 DEPARTMENT SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE
16 COMPLEXITY AND THE NATURE OF THE CONSTRUCTION SERVICES TO BE RENDERED. IF
17 THE DEPARTMENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON
18 OR FIRM WITH WHOM THE DEPARTMENT HAS COMMENCED NEGOTIATIONS AT COMPENSATION
19 AND ON OTHER CONTRACT TERMS THE DEPARTMENT DETERMINES TO BE FAIR AND
20 REASONABLE, THE DEPARTMENT SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT
21 PERSON OR FIRM. THE DEPARTMENT MAY UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST
22 QUALIFIED PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE DEPARTMENT IS NOT
23 THEN NEGOTIATING AND WITH WHOM THE DEPARTMENT HAS NOT PREVIOUSLY NEGOTIATED
24 IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO
25 REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST. AS TO EACH CONTRACT FOR
26 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ENTERED INTO PURSUANT TO THIS
27 SUBSECTION, CONSTRUCTION SHALL NOT COMMENCE UNTIL THE DEPARTMENT AND THE
28 CONTRACTOR AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE DEPARTMENT WILL
29 PAY FOR THE CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM PRICE FOR
30 THE CONSTRUCTION TO BE COMMENCED.

31 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT
32 MAY AWARD MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION
33 SERVICES AS FOLLOWS:

34 1. THE DEPARTMENT SHALL USE THE SELECTION TEAM THAT IS APPOINTED FOR
35 THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

36 2. THE DEPARTMENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS
37 OR FIRMS ON THE FINAL LIST THAT IS DEVELOPED PURSUANT TO SUBSECTION C OF THIS
38 SECTION.

39 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

40 (a) THE DEPARTMENT'S PROJECT SCHEDULE AND PROJECT FINAL DESIGN AND
41 CONSTRUCTION BUDGET OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT INCLUDES
42 MAINTENANCE SERVICES OR OPERATIONS SERVICES.

43 (b) A STATEMENT THAT THE CONTRACT WILL BE AWARDED TO THE OFFERORS
44 WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF POINTS UNDER A SCORING METHOD.

1 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
2 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
3 FACTOR.

4 (d) A REQUIREMENT THAT EACH OFFEROR SEPARATELY SUBMIT A TECHNICAL
5 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
6 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

7 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION TEAM
8 WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE PROPOSAL AND
9 WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING THE PRICE
10 PROPOSAL.

11 (f) IF THE DEPARTMENT CONDUCTS DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF
12 THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND A REQUIREMENT
13 THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL BEFORE THE
14 DISCUSSIONS ARE HELD.

15 4. IF THE DEPARTMENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
16 PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
17 TECHNICAL PROPOSAL TO THE DEPARTMENT BEFORE THOSE DISCUSSIONS ARE HELD.

18 5. IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
19 THE REQUEST FOR PROPOSALS, THE SELECTION TEAM SHALL CONDUCT DISCUSSIONS WITH
20 ALL OFFERORS THAT SUBMIT PRELIMINARY TECHNICAL PROPOSALS. DISCUSSIONS SHALL
21 BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE FULL UNDERSTANDING OF, AND
22 RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS. THE DEPARTMENT SHALL
23 ACCORD FAIR TREATMENT TO OFFERORS WITH RESPECT TO ANY OPPORTUNITY FOR
24 DISCUSSION AND FOR CLARIFICATION BY THE OWNER. REVISION OF PRELIMINARY
25 TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER SUBMISSION OF PRELIMINARY
26 TECHNICAL PROPOSALS AND BEFORE THE AWARD FOR THE PURPOSE OF OBTAINING THE
27 BEST AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED
28 FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS SHALL NOT BE DISCLOSED TO
29 OTHER COMPETING OFFERORS.

30 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
31 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
32 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND THE OFFEROR'S PRICE
33 PROPOSAL.

34 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION TEAM SHALL OPEN
35 THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS AND
36 SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE REQUEST
37 FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION
38 AND SCORING.

39 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
40 TECHNICAL PROPOSALS, THE SELECTION TEAM SHALL OPEN THE PRICE PROPOSALS,
41 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
42 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
43 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
44 SCORING.

1 9. THE DEPARTMENT SHALL AWARD THE MULTIPLE CONTRACTS FOR
2 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO THE RESPONSIVE AND RESPONSIBLE
3 OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST SCORES UNDER THE METHOD OF
4 SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE
5 USED IN THE EVALUATION.

6 10. THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
7 MADE.

8 G. UNTIL AN AWARD AND EXECUTION OF ALL OF THE MULTIPLE CONTRACTS BY
9 THE DEPARTMENT, ONLY THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST
10 DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO
11 THE PUBLIC. ALL OTHER INFORMATION RECEIVED BY THE DEPARTMENT IN RESPONSE TO
12 THE REQUEST FOR QUALIFICATIONS OR CONTAINED IN THE PROPOSALS IS CONFIDENTIAL
13 IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO
14 COMPETING OFFERORS DURING THE SELECTION PROCESS. THE DEPARTMENT SHALL OPEN
15 THE PROPOSALS TO PUBLIC INSPECTION AFTER THE CONTRACT IS AWARDED AND THE
16 DEPARTMENT HAS EXECUTED ALL OF THE MULTIPLE CONTRACTS. TO THE EXTENT THAT
17 THE OFFEROR DESIGNATES AND THE DEPARTMENT CONCURS, TRADE SECRETS AND OTHER
18 PROPRIETARY DATA CONTAINED IN A PROPOSAL REMAIN CONFIDENTIAL.

19 H. THE DEPARTMENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST
20 FOR PROPOSALS OR REJECT IN WHOLE OR IN PART ANY OR ALL PROPOSALS AS SPECIFIED
21 IN THE SOLICITATION IF IT IS IN THE BEST INTEREST OF THE DEPARTMENT. THE
22 DEPARTMENT SHALL MAKE THE REASONS FOR CANCELLATION OR REJECTION PART OF THE
23 CONTRACT FILE.

24 I. NOTWITHSTANDING ANY OTHER LAW:

25 1. THE CONTRACTOR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IS
26 NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN SERVICES PURSUANT TO TITLE
27 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY PERFORMING THE DESIGN SERVICES
28 ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY REGISTERED.

29 2. THE CONTRACTOR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES
30 SHALL BE LICENSED TO PERFORM CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

31 3. THE DEPARTMENT SHALL NOT PROCURE ANY CONSTRUCTION SERVICES USING
32 THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES METHOD OF PROJECT DELIVERY
33 UNDER THIS SECTION AFTER DECEMBER 31, 2025. FOR THE PURPOSES OF THIS
34 PARAGRAPH, THE DEPARTMENT PROCURES CONSTRUCTION SERVICES IF THE DEPARTMENT
35 SOLICITS THE CONTRACT FOR CONSTRUCTION SERVICES. IF THE DEPARTMENT SOLICITS
36 A CONTRACT FOR CONSTRUCTION SERVICES ON OR BEFORE DECEMBER 31, 2025, THE
37 CONTRACT MAY BE EXECUTED AND CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE
38 RENDERED IN WHOLE OR IN PART AFTER DECEMBER 31, 2025.

39 J. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

40 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
41 MILLION DOLLARS OR THE HIGHER OR LOWER AMOUNT PRESCRIBED BY THE DEPARTMENT.
42 REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO
43 CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

44 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT ANY OF THE
45 WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES

1 CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL TASKS, STANDARD UNIT
2 PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB ORDERS BASED ON THE
3 NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB ORDER:

4 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
5 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
6 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

7 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
8 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

9 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
10 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

11 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
12 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
13 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

14 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
15 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

16 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
17 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

18 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
19 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
20 PERFORM.

21 K. EACH CONTRACT FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL
22 CONTAIN A DESCRIPTION OF EACH SEPARATE LOCATION AT WHICH THE CONSTRUCTION
23 WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR INCLUDE IN EACH OF
24 THE CONTRACTOR SUBCONTRACTS THE SAME LOCATION DESCRIPTION. THE CONTRACTOR
25 SHALL INCLUDE IN EACH SUBCONTRACT A DESCRIPTION OF EACH SEPARATE LOCATION AT
26 WHICH THE CONSTRUCTION WILL BE PERFORMED.

27 L. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SECTIONS 28-6923 AND
28 28-6924, RELATING TO BID, PERFORMANCE AND PAYMENT BONDS, CHANGE ORDERS,
29 PROGRESS PAYMENTS, CONTRACT RETENTION, DEFINITIONS AND AUTHORITY TO AWARD
30 CONTRACTS, APPLY TO DEPARTMENT JOB-ORDER-CONTRACTING CONTRACTS FOR
31 TRANSPORTATION FACILITIES PURSUANT TO THIS SECTION.

32 Sec. 7. Section 34-101, Arizona Revised Statutes, is amended to read:

33 34-101. Definitions

34 In this title, unless the context otherwise requires:

35 1. "Agent":

36 (a) Means any county, city or town, or officer, board or commission
37 thereof OF ANY COUNTY, CITY OR TOWN, and irrigation, power, electrical,
38 drainage, flood protection and flood control districts, tax levying public
39 improvement districts, and county or city improvement districts.

40 (b) Includes any county board of supervisors and any representative
41 authorized by an agent to act as an agent for the purpose of authorizing
42 necessary change orders to previously awarded contracts in accordance with
43 guidelines established by rule of the agent, including the board of
44 supervisors.

1 2. "Architect services" means those professional architect services
2 that are within the scope of architectural practice as provided in title 32,
3 chapter 1.

4 3. "Construction":

5 (a) Means the process of building, altering, repairing, improving or
6 demolishing any public structure or building or other public improvements of
7 any kind to any public real property.

8 (b) Does not include the routine operation, routine repair or routine
9 maintenance of existing facilities, structures, buildings or real property or
10 ~~demolition projects costing less than two hundred thousand dollars.~~

11 4. "Construction-manager-at-risk" means a project delivery method in
12 which:

13 (a) There is a separate contract for design services and a separate
14 contract for construction services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT
15 FOR CONSTRUCTION SERVICES, THE AGENT MAY ELECT SEPARATE CONTRACTS FOR
16 PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING THE
17 CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

18 (b) The contract for construction services may be entered into at the
19 same time as the contract for design services or at a later time.

20 (c) Design and construction of the project may be ~~in sequential phases~~
21 ~~or concurrent phases.~~ EITHER:

22 (i) SEQUENTIAL WITH THE ENTIRE DESIGN COMPLETE BEFORE CONSTRUCTION
23 COMMENCES.

24 (ii) CONCURRENT WITH THE DESIGN PRODUCED IN TWO OR MORE PHASES AND
25 CONSTRUCTION OF SOME PHASES COMMENCING BEFORE THE ENTIRE DESIGN IS COMPLETE.

26 (d) Finance services, maintenance services, operations services,
27 preconstruction services and other related services may be included.

28 5. "Construction services" means either of the following for
29 construction-manager-at-risk, design-build and job-order-contracting project
30 delivery methods:

31 (a) Construction, excluding services, through the
32 construction-manager-at-risk or job-order-contracting project delivery
33 methods.

34 (b) A combination of construction and, as elected by the agent, one or
35 more related services, such as finance services, maintenance services,
36 operations services, design services and preconstruction services, as those
37 services are authorized in the definitions of construction-manager-at-risk,
38 design-build or job-order-contracting in this section.

39 6. "Contract" means all types of agent agreements, regardless of what
40 they are called, for the procurement of services pursuant to this title.

41 7. "Contractor" means any person who has a contract with an agent.

42 8. "Design-bid-build" means a project delivery method in which:

43 (a) There is a sequential award of two separate contracts.

44 (b) The first contract is for design services.

45 (c) The second contract is for construction.

- 1 (d) Design and construction of the project are in sequential phases.
2 (e) Finance services, maintenance services and operations services are
3 not included.
- 4 9. "Design-build" means a project delivery method in which:
5 (a) There is a single contract for design services and construction
6 services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT FOR DESIGN SERVICES AND
7 CONSTRUCTION SERVICES, THE AGENT MAY ELECT SEPARATE CONTRACTS FOR
8 PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING THE DESIGN PHASE, FOR
9 CONSTRUCTION AND DESIGN SERVICES DURING THE CONSTRUCTION PHASE AND FOR ANY
10 OTHER CONSTRUCTION SERVICES.
11 (b) Design and construction of the project may be ~~in sequential phases~~
12 ~~or concurrent phases~~. EITHER:
13 (i) SEQUENTIAL WITH THE ENTIRE DESIGN COMPLETE BEFORE CONSTRUCTION
14 COMMENCES.
15 (ii) CONCURRENT WITH THE DESIGN PRODUCED IN TWO OR MORE PHASES AND
16 CONSTRUCTION OF SOME PHASES COMMENCING BEFORE THE ENTIRE DESIGN IS COMPLETE.
17 (c) Finance services, maintenance services, operations services,
18 preconstruction services and other related services may be included.
- 19 10. "Design requirements":
20 (a) Means at a minimum the agent's written description of the project
21 or service to be procured, including:
22 (i) The required features, functions, characteristics, qualities and
23 properties.
24 (ii) The anticipated schedule, including start, duration and
25 completion.
26 (iii) The estimated budgets applicable to the specific procurement for
27 design and construction and, if applicable, for operation and maintenance.
28 (b) May include:
29 (i) Drawings and other documents illustrating the scale and
30 relationship of the features, functions and characteristics of the project,
31 which shall all be prepared by an architect or engineer, as appropriate, who
32 is registered pursuant to section 32-121.
33 (ii) Additional design information or documents that the agent elects
34 to include.
- 35 11. "Design services" means architect services, engineer services or
36 landscape architect services.
- 37 12. "Direct selection" means the selection of a technical registrant
38 without the requirement of advertising or the use of a current register.
- 39 13. "Engineer services" means those professional engineer services that
40 are within the scope of engineering practice as provided in title 32,
41 chapter 1.
- 42 14. "Finance services" means financing for a construction services
43 project.
- 44 15. "Horizontal construction" means CONSTRUCTION OF highways, roads,
45 streets, bridges, canals, floodways, earthen dams, and landfills, LIGHT RAIL

1 AND AIRPORT RUNWAYS, TAXIWAYS AND APRONS. FOR THE PURPOSES OF THIS
2 PARAGRAPH, LIGHT RAIL DOES NOT INCLUDE ANY RELATED RAIL STATIONS, MAINTENANCE
3 FACILITIES OR PARKING FACILITIES.

4 16. "Job-order-contracting" means a project delivery method in which:

5 (a) The contract is a requirements contract for indefinite quantities
6 of construction.

7 (b) The construction to be performed is specified in job orders issued
8 during the contract.

9 (c) Finance services, maintenance services, operations services,
10 preconstruction services, design services and other related services may be
11 included.

12 17. "Landscape architect services" means those professional landscape
13 architect services that are within the scope of landscape architectural
14 practice as provided in title 32, chapter 1.

15 18. "Maintenance services" means routine maintenance, repair and
16 replacement of existing facilities, structures, buildings or real property.

17 19. "Materials":

18 (a) Means all property, including equipment, supplies, printing,
19 insurance and leases of property.

20 (b) Does not include land, a permanent interest in land or real
21 property or leasing space.

22 20. "Operations services" means routine operation of existing
23 facilities, structures, buildings or real property.

24 21. "Person" means any corporation, business, individual, union,
25 committee, club, other organization or group of individuals.

26 22. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
27 ACTIVITIES during the design phase.

28 23. "Procurement":

29 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
30 any materials, services, construction or construction services.

31 (b) Includes all functions that pertain to obtaining any ~~material~~
32 MATERIALS, services, construction or construction services, including
33 description of requirements, selection and solicitation of sources,
34 preparation and award of contract and all phases of contract administration.

35 24. "Public competition" means a competitive procurement process
36 pursuant to section 34-103, subsection G that includes advertising in a
37 public newspaper and a qualification-based selection process.

38 25. "Services":

39 (a) Means the furnishing of labor, time or effort by a contractor or
40 subcontractor that does not involve the delivery of a specific end product
41 other than required reports and performance.

42 (b) Does not include employment agreements or collective bargaining
43 agreements.

1 ~~26. "Specific single project" means one or more facilities at a single~~
2 ~~location, at a common location or, if for a similar purpose, at multiple~~
3 ~~locations.~~

4 ~~27.~~ 26. "Subcontractor" means a person who contracts to perform work
5 or render service to a contractor or to another subcontractor as a part of a
6 contract with an agent.

7 ~~28.~~ 27. "Technical registrant" means a person who provides any of the
8 professional services listed in title 32, chapter 1.

9 Sec. 8. Section 34-102, Arizona Revised Statutes, is amended to read:

10 34-102. Multiple contracts; professional services

11 A. For professional services that are provided by a technical
12 registrant, an agent may procure and award multiple contracts from a single
13 solicitation under section 34-103 or ~~34-603~~ CHAPTER 6 OF THIS TITLE, as
14 applicable, except that professional services that are part of design-build
15 construction services may not be procured under this subsection. Each of the
16 multiple contracts for professional services THAT ARE PROCURED IN A
17 PROCUREMENT must have a term not exceeding five years AFTER THE DATE OF THE
18 CONTRACT AWARD OF THE FIRST CONTRACT UNDER THE PROCUREMENT and may continue
19 in effect after the five year term for professional services on projects
20 commenced within the five year term.

21 B. In a solicitation for multiple contracts for professional services
22 by technical registrants, ~~+~~

23 ~~1. Any publication shall include the fact that multiple contracts may~~
24 ~~or will be awarded, shall state the number of contracts that may or will be~~
25 ~~awarded and shall describe the services to be performed under each contract.~~
26 ~~If the solicitation is under section 34-603, subsection C, the request for~~
27 ~~qualifications shall also contain this information.~~

28 ~~2. There shall be a single selection process for all of the multiple~~
29 ~~contracts, except that if the solicitation is under section 34-103,~~
30 ~~subsections E and F or under section 34-603, subsection C there shall be a~~
31 ~~separate final list for each contract and a separate contract negotiation for~~
32 ~~each contract. However, if the solicitation specifies that all of the~~
33 ~~multiple contracts will be awarded to a single contractor, there may be a~~
34 ~~single final list and a single negotiation for all of the multiple contracts.~~

35 ~~3. the agent may award all of the multiple contracts to one contractor~~
36 ~~or may award the multiple contracts to multiple contractors.~~

37 C. ~~Except for construction manager at risk construction services for~~
38 ~~horizontal construction and design-build construction services for horizontal~~
39 ~~construction, Multiple contracts for construction manager at risk~~
40 ~~construction services, design-build construction services or THE SAME~~
41 ~~job-order-contracting construction services TO BE AWARDED TO SEPARATE PERSONS~~
42 ~~OR FIRMS may be procured in a single solicitation as provided in section~~
43 ~~34-603, subsection C 34-604.~~

1 Sec. 9. Section 34-103, Arizona Revised Statutes, is amended to read:

2 34-103. Employment of technical registrants for work on public
3 buildings and structures; direct selection; final
4 list selection; public competition

5 A. An agent shall procure professional services from a technical
6 registrant in the manner prescribed in chapter 6 of this title if either of
7 the following applies:

8 1. The contract is with a technical registrant other than an architect
9 and is for an amount of more than five hundred thousand dollars.

10 2. The contract is with an architect and is for an amount of more than
11 two hundred fifty thousand dollars.

12 B. An agent may procure professional services from a technical
13 registrant in the manner prescribed in chapter 6 of this title or as
14 prescribed in subsection D if either of the following applies:

15 1. The contract is with a technical registrant other than an architect
16 and is for an amount of five hundred thousand dollars or less.

17 2. The contract is with an architect and is for an amount of two
18 hundred fifty thousand dollars or less.

19 C. If authority is given by law to an agent to construct a building or
20 structure, or additions to or alterations of existing buildings, an agent
21 shall employ an architect or engineer, or both, as warranted by the type of
22 construction, if the agent deems the work to be of a nature that requires
23 such employment.

24 D. An agent may employ a technical registrant by direct selection, by
25 public competition pursuant to subsection G or pursuant to subsections E and
26 F if either of the following applies:

27 1. The contract is with a technical registrant other than an architect
28 and is for an amount of five hundred thousand dollars or less.

29 2. The contract is with an architect and is for an amount of two
30 hundred fifty thousand dollars or less.

31 E. The agent may elect to employ a technical registrant OR TECHNICAL
32 REGISTRANTS by encouraging persons or firms engaged in the lawful practice of
33 the profession to submit annually a statement of qualifications and
34 experience. If the agent elects to employ a technical registrant OR
35 TECHNICAL REGISTRANTS by this method, the agent shall initiate an
36 appropriately qualified selection committee for each procurement, which may
37 include one CONTRACT or ~~more~~ MULTIPLE contracts, in accordance with rules
38 adopted by the agent. THE AMOUNT OF EACH CONTRACT IN A SINGLE PROCUREMENT
39 UNDER THIS SUBSECTION AND SUBSECTION F SHALL NOT EXCEED THE DOLLAR AMOUNT
40 LIMITS IN SUBSECTIONS B AND D. The selection committee shall evaluate
41 current statements of qualifications and experience on file with the agent
42 together with those that may be submitted by other persons or firms regarding
43 the procurement. If possible and practicable, the selection committee shall
44 conduct interviews ~~with at least three persons or firms~~ regarding the
45 procurement and the relative methods of furnishing the required services and,

1 if possible, shall select, in order of preference and based on criteria
2 established and published by the selection committee, ~~a separate final list~~
3 ~~for each contract being procured of at least three~~ ONE OR MORE FINAL LISTS of
4 the persons or firms deemed to be the most qualified to provide the services
5 required. The selection committee shall base the selection of each final
6 list and the order of preference on each final list on demonstrated
7 competence and qualifications only. The agent and the selection committee
8 shall not request or consider fees, price, man-hours or any other cost
9 information at any point in the selection process under this subsection,
10 including the selection of the persons or firms to be interviewed, the
11 selection of the persons and firms to be on a final list, in determining the
12 order of preference of persons and firms on a final list or for any other
13 purpose in the selection process. IF THE PROCUREMENT IS FOR:

14 1. A SINGLE CONTRACT OR IF THE PROCUREMENT IS FOR MULTIPLE CONTRACTS
15 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THERE SHALL BE ONE FINAL LIST OF AT
16 LEAST THREE BUT NO MORE THAN FIVE PERSONS OR FIRMS.

17 2. MULTIPLE CONTRACTS FOR DIFFERENT TECHNICAL REGISTRANT SERVICES TO
18 BE AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE A SEPARATE FINAL LIST
19 FOR EACH TYPE OF TECHNICAL REGISTRANT SERVICES AND THE NUMBER OF PERSONS OR
20 FIRMS ON EACH FINAL LIST SHALL BE THE NUMBER OF CONTRACTS FOR EACH TYPE OF
21 TECHNICAL REGISTRANT SERVICE PLUS ANOTHER NUMBER THAT IS DETERMINED BY THE
22 AGENT AND THAT IS NOT MORE THAN FIVE.

23 3. MULTIPLE CONTRACTS FOR SIMILAR TECHNICAL REGISTRANT SERVICES TO BE
24 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE ONE FINAL LIST AND THE
25 NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS
26 PLUS ANOTHER NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN
27 FIVE.

28 F. After ~~a~~ EACH final list is selected ~~for each contract included in~~
29 ~~the procurement~~ PURSUANT TO SUBSECTION E, the agent shall enter into separate
30 negotiations ~~for a contract~~ with the highest qualified person or firm on the
31 EACH final list ~~for the contract determined under subsection E for the~~
32 ~~professional services~~ OR, IN THE CASE OF A FINAL LIST FOR MULTIPLE CONTRACTS
33 TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THE AGENT SHALL ENTER INTO
34 NEGOTIATIONS WITH A NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON A
35 FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED. The
36 negotiations shall include consideration of compensation and other contract
37 terms that the agent determines to be fair and reasonable to the agent. In
38 making this determination, the agent shall take into account the estimated
39 value, the scope, the complexity and the nature of the professional services
40 to be rendered. If the agent is not able to negotiate a satisfactory
41 contract ~~with the highest qualified person or firm on the final list for the~~
42 ~~contract at a~~ A PERSON OR FIRM WITH WHICH THE AGENT IS NEGOTIATING AT A price
43 and on other contract terms the agent determines to be fair and reasonable,
44 the agent shall formally terminate negotiations with that person or firm.
45 The agent may enter into negotiations with the next most qualified person or

1 firm on the final list ~~for the contract~~ in sequence until an agreement is
2 reached or a determination is made to reject all persons or firms on the
3 final list ~~for the contract~~. IF THE AGENT TERMINATES NEGOTIATIONS WITH A
4 PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS WITH ANOTHER PERSON
5 OR FIRM ON A FINAL LIST, THE AGENT SHALL NOT IN THAT PROCUREMENT RECOMMENCE
6 NEGOTIATIONS OR ENTER INTO THE SINGLE CONTRACT OR MULTIPLE CONTRACTS FOR THE
7 TECHNICAL REGISTRANT SERVICES COVERED BY THAT FINAL LIST WITH ANY PERSON OR
8 FIRM ON THAT FINAL LIST WITH WHOM THE AGENT HAS TERMINATED NEGOTIATIONS.

9 G. If competitive designs are solicited, the agent shall publish
10 notice of the competition at least thirty days before the date set for
11 closing the competition. The notice shall include the following:

- 12 1. The project title and description.
- 13 2. The design and construction budget.
- 14 3. The competitive process and criteria to be used to select the
15 winning offeror.
- 16 4. The amount of the stipend to be paid to the unsuccessful offerors.
- 17 5. The offerors' response date.
- 18 6. The person to contact to obtain additional information regarding
19 the competition.
- 20 7. Any other requirements established by the agent as appropriate.

21 Sec. 10. Section 34-602, Arizona Revised Statutes, is amended to read:

22 34-602. Project delivery methods for design and construction
23 services

24 A. An agent may procure design services, construction and construction
25 services, as applicable, under any of the following project delivery methods:

- 26 1. Design-bid-build.
- 27 2. Construction-manager-at-risk.
- 28 3. Design-build.
- 29 4. Job-order-contracting.

30 B. Except as provided in section 41-2501, subsection C and section
31 41-2535, subsection D, for the design-bid-build project delivery method, the
32 agent shall procure:

33 1. Design services as provided in this chapter and chapter 1, article
34 1 of this title.

35 2. Construction by competitive sealed bidding pursuant to chapter 2,
36 articles 1, 2 and 3 of this title and pursuant to rules adopted by the agent
37 pursuant to section 41-2501, subsection C.

38 C. An agent shall procure construction services under the
39 construction-manager-at-risk, design-build and job-order-contracting project
40 delivery methods pursuant to this chapter.

41 D. An agent shall procure design services relating to
42 construction-manager-at-risk construction services projects pursuant to
43 section 34-103, ~~or~~ 34-603, 34-604 OR 34-606, as applicable.

44 E. For job-order-contracting construction services projects, if the
45 agent does not include design services in the job-order-contracting

1 construction services contract, the agent shall procure any design services
2 relating to the job-order-contracting construction services projects under
3 the contract pursuant to section 34-103, ~~or~~ 34-603, 34-604 OR 34-606, as
4 applicable.

5 Sec. 11. Section 34-603, Arizona Revised Statutes, is amended to read:

6 34-603. Procurement of professional services and
7 construction-manager-at-risk, design-build and
8 job-order-contracting construction services;
9 definition

10 A. Except for services THAT ARE UNDER A SINGLE CONTRACT AND THAT an
11 agent procures pursuant to section 34-103 or ~~34-604~~ 34-606, an agent shall
12 procure A SINGLE CONTRACT FOR the following services pursuant to this
13 section:

- 14 1. Architect services.
- 15 2. Construction-manager-at-risk construction services.
- 16 3. Design-build construction services.
- 17 4. Engineer services.
- 18 5. Job-order-contracting construction services.
- 19 6. Landscape architect services.
- 20 7. Assayer services.
- 21 8. Geologist services.
- 22 9. Land surveying services.

23 B. An agent shall provide notice of each procurement of professional
24 services or construction services specified in this section and shall award
25 ~~contracts~~ THE SINGLE CONTRACT on the basis of demonstrated competence and
26 qualifications for the type of professional services or construction services
27 pursuant to the procedures prescribed in this section.

28 C. In ~~the~~ A procurement of A SINGLE CONTRACT FOR professional services
29 or construction services pursuant to this section:

30 1. THE FOLLOWING REQUIREMENTS APPLY:

31 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
32 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
33 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
34 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
35 SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE
36 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
37 PURPOSE IN THE SELECTION PROCESS.

38 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
39 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
40 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
41 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
42 AGENT FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
43 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

44 (c) AN AGENT IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT UNDER THIS
45 SECTION. ALTERNATIVELY:

1 (i) FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, AN AGENT
2 MAY ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES DURING THE DESIGN
3 PHASE, FOR CONSTRUCTION DURING THE CONSTRUCTION PHASE AND FOR ANY OTHER
4 CONSTRUCTION SERVICES.

5 (ii) FOR DESIGN-BUILD CONSTRUCTION SERVICES, AN AGENT MAY ELECT
6 SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING
7 THE DESIGN PHASE, FOR CONSTRUCTION AND DESIGN SERVICES DURING THE
8 CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

9 (iii) FOR PROFESSIONAL SERVICES, AN AGENT MAY ENTER INTO MULTIPLE
10 CONTRACTS FOR DIFFERENT PHASES OF A SINGLE PROJECT.

11 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
12 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
13 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
14 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
15 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
16 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
17 AT MULTIPLE LOCATIONS:

18 (i) AT THE TIME THE REQUEST FOR QUALIFICATIONS IS ISSUED, THE AGENT
19 MUST INTEND TO COMMENCE ALL CONSTRUCTION AT EACH LOCATION WITHIN THIRTY
20 MONTHS AFTER EXECUTION OF THE FIRST CONTRACT FOR PRECONSTRUCTION SERVICES OR
21 OTHER CONSTRUCTION SERVICES AT ANY OF THE LOCATIONS.

22 (ii) THE REQUEST FOR QUALIFICATIONS MUST INCLUDE THE INFORMATION
23 DESCRIBED IN PARAGRAPH 2, SUBDIVISION (G) OF THIS SUBSECTION.

24 (e) IF THE AGENT ENTERS INTO THE FIRST CONTRACT FOR PRECONSTRUCTION
25 SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS THE RESULT OF THE
26 PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS. AFTER EXECUTION OF
27 THAT FIRST CONTRACT THE AGENT MAY NOT USE THE PROCUREMENT OR THE EXISTING
28 FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A CONTRACT WITH
29 ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

30 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
31 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
32 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

33 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
34 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
35 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
36 PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
37 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
38 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY
39 ELECT TO TERMINATE THE PROCUREMENT.

40 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
41 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
42 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
43 TO THE REQUEST FOR QUALIFICATIONS OR, IF ONE OR MORE PERSONS OR FIRMS DROP
44 OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR
45 FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE

1 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT DETERMINES IN WRITING
2 THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
3 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE
4 OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A RESOLICITATION.

5 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
6 FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE
7 BEST INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON
8 OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
9 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
10 COMMITTEE AS THE NEXT MOST QUALIFIED.

11 1- 2. An agent shall issue a request for qualifications for each
12 ~~contract~~ PROCUREMENT and publish notice of the request for qualifications.
13 This notice shall be published by advertising in a newspaper of general
14 circulation in the county in which the agent is located for two consecutive
15 publications if it is a weekly newspaper or for two publications that are at
16 least six but no more than ten days apart if it is a daily newspaper. The
17 request for qualifications shall:

18 ~~(a) Include the number of persons or firms to be included on the final~~
19 ~~list. In a request for qualifications for a horizontal construction project,~~
20 ~~at least three but not more than five persons or firms shall be on the final~~
21 ~~list. In all other requests for qualifications, three persons or firms shall~~
22 ~~be on the final list.~~

23 ~~(b) State the criteria to be used by the selection committee to select~~
24 ~~the person or firm to perform the professional services or the construction~~
25 ~~services. The request for qualifications shall also state in a manner~~
26 ~~determined by the agent the relative weight of the selection criteria and, if~~
27 ~~required under paragraph 7, subdivision (b) of this subsection, that one of~~
28 ~~the criteria will be the person's or firm's subcontractor selection plan or~~
29 ~~procedures to implement the agent's subcontractor selection plan.~~

30 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED, DESCRIBE THE
31 SERVICES TO BE PERFORMED UNDER THE CONTRACT AND STATE THAT ONE PERSON OR FIRM
32 MAY OR WILL BE AWARDED THE CONTRACT.

33 (b) IN A PROCUREMENT OF A CONTRACT TO BE NEGOTIATED UNDER SUBSECTION E
34 OF THIS SECTION, STATE THAT THERE WILL BE A SINGLE FINAL LIST OF AT LEAST
35 THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS. IN A PROCUREMENT IN WHICH THE
36 CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS SECTION, STATE THAT THERE
37 WILL BE A SINGLE FINAL LIST AND THAT THE NUMBER OF PERSONS OR FIRMS ON THE
38 FINAL LIST WILL BE THREE.

39 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
40 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
41 EXCEPT THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
42 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
43 THE AGENT'S SUBCONTRACTOR SELECTION PLAN. ALL SELECTION CRITERIA UNDER THIS
44 SUBSECTION SHALL BE FACTORS THAT DEMONSTRATE COMPETENCE AND QUALIFICATIONS

1 FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES INCLUDED IN
2 THE PROCUREMENT. IF:

3 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
4 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
5 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
6 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
7 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
8 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
9 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
10 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
11 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE WHETHER THE
12 AGENT WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND THEIR ORDER ON
13 THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW PROCESS OR THROUGH
14 THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE EVALUATION OF
15 STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN RESPONSE TO
16 THE AGENT'S REQUEST FOR QUALIFICATIONS.

17 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
18 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
19 BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND IN
20 DETERMINING THEIR ORDER ON THE FINAL LIST.

21 ~~(e) (d) If the agent will hold interviews as part of the selection~~
22 ~~process, state that interviews shall WILL be held AND THAT THE INTERVIEWS~~
23 ~~WILL BE with at least three and no BUT NOT more than five persons or~~
24 ~~firms, except that if multiple contracts are being procured under a single~~
25 ~~request for qualifications solicitation under this subsection or a single~~
26 ~~request for qualifications and request for proposals solicitation under this~~
27 ~~subsection and subsection F of this section, the number to be interviewed~~
28 ~~shall be at least three and not more than the number of contracts plus two.~~

29 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

30 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
31 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
32 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
33 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
34 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

35 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
36 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE CONSTRUCTION SERVICES
37 AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED ON QUALIFICATIONS ALONE
38 OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE
39 AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE
40 PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE AGENT'S SUBCONTRACTOR
41 SELECTION PLAN.

42 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
43 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
44 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND

1 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
2 IN CONNECTION WITH THE PROCUREMENT.

3 (g) IN A PROCUREMENT OF CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
4 SERVICES OR DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED AT MULTIPLE
5 LOCATIONS, INCLUDE:

6 (i) A BRIEF DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED
7 AT EACH LOCATION.

8 (ii) THE ESTIMATED BUDGET FOR THE CONSTRUCTION SERVICES TO BE
9 PERFORMED AT EACH LOCATION.

10 (iii) A SCHEDULE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
11 LOCATION THAT SHOWS THE AGENT'S INTENT TO COMMENCE ALL CONSTRUCTION AT EACH
12 LOCATION WITHIN THIRTY MONTHS AFTER EXECUTION OF THE FIRST CONTRACT FOR
13 PRECONSTRUCTION SERVICES OR OTHER CONSTRUCTION SERVICES AT ANY OF THE
14 LOCATIONS.

15 2- 3. An agent shall initiate an appropriately qualified selection
16 committee for each request for qualifications. THE AGENT SHALL ENSURE THAT
17 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
18 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE AGENT
19 OR AN AGENT REPRESENTATIVE WHO IS APPOINTED BY THE AGENT. If the agent is
20 procuring professional services, the agent shall determine the number and
21 qualifications of the selection committee members. A selection committee for
22 the procurement of construction services shall not have more than seven
23 members, except that, if the contract involves the agent and additional
24 governmental or private participants, the number of members of the selection
25 committee shall be increased by one for each additional participant, except
26 that the maximum number of members of the selection committee is nine. The
27 selection committee for construction services shall include at least one
28 person who is a senior management employee of a licensed contractor and one
29 person who is an architect or an engineer who is registered pursuant to
30 section 32-121. These members may be employees of the agent or outside
31 consultants. Outside contractors, architects and engineers serving on a
32 selection committee shall not receive compensation from the agent for
33 performing this service, but the agent may elect to reimburse outside
34 contractors, architects and engineers for travel, lodging and other expenses
35 incurred in connection with service on a selection committee. A person who
36 is a member of a selection committee shall not be a contractor under a
37 contract awarded under the procurement or provide ANY PROFESSIONAL SERVICES,
38 construction, construction services, materials or OTHER services under the
39 contract. The selection committee AND THE AGENT shall DO THE FOLLOWING:

40 ~~(a) Evaluate the statements of qualifications and performance data~~
41 ~~that are submitted in response to the agent's request for qualifications.~~

42 ~~(b) (a) If determined by the agent and included by the agent in the~~
43 ~~request for qualifications, IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR~~
44 QUALIFICATIONS:

1 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
2 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
3 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
4 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
5 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
6 PERSONS OR FIRMS TO BE INTERVIEWED.

7 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
8 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
9 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
10 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
11 THE AGENT SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE
12 SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED
13 TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO DETERMINE THEIR ORDER
14 ON THE FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE
15 DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE
16 THE PERSONS OR FIRMS TO BE INTERVIEWED.

17 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with the number
18 of persons or firms to be interviewed as stated in the request for
19 qualifications regarding the professional services or construction services
20 and the relative methods of approach for furnishing the required professional
21 services or construction services.

22 ~~(c) (b) After any interviews, in order of preference, based on the~~
23 ~~criteria and the weighting of criteria included in the request for~~
24 ~~qualifications, select a final list for each contract of persons or firms the~~
25 ~~selection committee deems to be the most qualified to provide the~~
26 ~~professional services or construction services~~ BASED ONLY ON THE SELECTION
27 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA SPECIFIED AS PROVIDED
28 IN THIS SUBSECTION FOR SELECTION OF THE PERSONS OR FIRMS ON THE FINAL LIST
29 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL SELECT THE
30 PERSONS OR FIRMS FOR THE FINAL LIST and, in the case of A FINAL LIST FOR a
31 contract that will be negotiated under subsection E of this section, rank the
32 persons or firms on the final list in order of preference. ~~The selection~~
33 ~~committee shall base the selection of the final list and the order of~~
34 ~~preference on demonstrated competence and qualifications only. If the~~
35 ~~request for qualifications solicited multiple contracts, the selection~~
36 ~~committee shall select a separate final list for each contract, except that~~
37 ~~if multiple contracts are being procured and if the request for~~
38 ~~qualifications specified that all of the multiple contracts will be awarded~~
39 ~~to a single contractor, the selection committee may select a single final~~
40 ~~list for all of the multiple contracts. The number of persons or firms on~~
41 ~~the final list shall be the number of persons or firms specified in the~~
42 ~~request for qualifications, except that:~~

43 ~~(i) If a smaller number of responsive and responsible persons or firms~~
44 ~~respond to the solicitation, the agent may elect to have the selection~~
45 ~~committee proceed with the selection process, including interviews and the~~

1 ~~final list, with the remaining persons or firms if at least two persons or~~
2 ~~firms remain or the agent may readvertise pursuant to this subsection as the~~
3 ~~agent deems necessary or appropriate.~~

4 ~~(ii) If only one responsive and responsible person or firm responds to~~
5 ~~a solicitation for a contract or multiple contracts to be negotiated pursuant~~
6 ~~to subsection E of this section, the agent may elect to proceed with only one~~
7 ~~person or firm in the selection process and may award the contract or~~
8 ~~contracts to a single person or firm if the agent determines in writing that~~
9 ~~the fee negotiated pursuant to subsection E of this section is fair and~~
10 ~~reasonable and that either other prospective persons or firms had reasonable~~
11 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

12 ~~(iii) If a person or firm on the final list withdraws or is removed~~
13 ~~from the selection process and the selection committee determines that it is~~
14 ~~in the best interest of the agent, the selection committee may replace that~~
15 ~~person or firm with another person or firm that submitted qualifications and~~
16 ~~that is selected by the selection committee as the next most qualified.~~

17 ~~(d) Base the selection of the final list and order of preference on~~
18 ~~the final list on demonstrated competence and qualifications only.~~

19 ~~3. Except for construction manager at risk construction services for~~
20 ~~horizontal construction and design build construction services for horizontal~~
21 ~~construction, an agent may procure multiple contracts for professional~~
22 ~~services, construction manager at risk construction services, design build~~
23 ~~construction services or job order contracting construction services under a~~
24 ~~single request for qualifications solicitation under this subsection or, for~~
25 ~~job order contracting construction services or design build construction~~
26 ~~services, under a single request for qualifications and request for proposals~~
27 ~~solicitation under this subsection and subsection F of this section. If an~~
28 ~~agent does this:~~

29 ~~(a) The advertisement and the request for qualifications shall state~~
30 ~~that multiple contracts may or will be awarded, shall state the number of~~
31 ~~contracts that may or will be awarded and shall describe the services to be~~
32 ~~performed under each contract.~~

33 ~~(b) There shall be a single selection process for all of the multiple~~
34 ~~contracts, except that for each contract there shall be a separate final list~~
35 ~~and a separate negotiation under subsection E of this section or a separate~~
36 ~~request for proposals competition under subsection F of this section.~~
37 ~~However, if the request for qualifications specifies that all of the multiple~~
38 ~~contracts will be awarded to a single contractor, there may be a single final~~
39 ~~list and a single negotiation for all of the multiple contracts under~~
40 ~~subsection E of this section or a single request for proposals competition~~
41 ~~under subsection F of this section.~~

42 ~~(c) The agent may award all of the multiple contracts to one~~
43 ~~contractor or may award the multiple contracts to multiple contractors.~~

44 ~~4. For professional services, an agent may procure multiple contracts~~
45 ~~using a single request for qualifications solicitation under this subsection;~~

1 ~~except that professional services that are part of design-build construction~~
2 ~~services may not be procured under this paragraph. Each of the multiple~~
3 ~~contracts for professional services must have a term not exceeding five years~~
4 ~~and may continue in effect after the five year term for professional services~~
5 ~~on projects commenced within the five year term.~~

6 ~~5. An agent may procure multiple contracts for job order contracting~~
7 ~~construction services using a single request for qualifications solicitation~~
8 ~~under this subsection or using a single request for qualifications and~~
9 ~~request for proposals solicitation under this subsection and subsection F of~~
10 ~~this section.~~

11 ~~6. Except for horizontal construction, an agent may procure multiple~~
12 ~~contracts for construction manager at risk construction services or for~~
13 ~~design-build construction services using a single request for qualifications~~
14 ~~solicitation under this subsection or for design-build construction services~~
15 ~~using a single request for qualifications and request for proposals~~
16 ~~solicitation under this subsection and subsection F of this section but in~~
17 ~~either case only for a specific single project. Portions of the specific~~
18 ~~single project shall be allocated to separate contracts.~~

19 ~~7. For construction manager at risk construction services,~~
20 ~~design-build construction services and job order contracting construction~~
21 ~~services if the contract will be negotiated under subsection E of this~~
22 ~~section or for job order contracting construction services if the contract~~
23 ~~will be awarded pursuant to subsection F of this section:~~

24 ~~(a) The person or firm selected to perform the construction services~~
25 ~~must select subcontractors based on qualifications alone or on a combination~~
26 ~~of qualifications and price and shall not select subcontractors based on~~
27 ~~price alone. A qualifications and price selection may be a single step~~
28 ~~selection based on a combination of qualifications and price or a two step~~
29 ~~selection. In a two step selection, the first step shall be based on~~
30 ~~qualifications alone and the second step may be based on a combination of~~
31 ~~qualifications and price or on price alone.~~

32 ~~(b) The agent shall include in the request for qualifications either:~~

33 ~~(i) A requirement that each person or firm submit a proposed~~
34 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
35 ~~selection plan must select subcontractors based on qualifications alone or on~~
36 ~~a combination of qualifications and price and shall not select subcontractors~~
37 ~~based on price alone and, as a selection criteria under the request for~~
38 ~~qualifications, an evaluation of each person's or firm's proposed~~
39 ~~subcontractor selection plan.~~

40 ~~(ii) A subcontractor selection plan adopted by the agent that will~~
41 ~~apply to the person or firm that is selected to perform the construction~~
42 ~~services and that requires subcontractors to be selected based on~~
43 ~~qualifications alone or on a combination of qualifications and price and not~~
44 ~~based on price alone, a requirement that each person or firm must submit a~~
45 ~~description of the procedures it proposes to use to carry out the agent's~~

1 ~~subcontractor selection plan and, as a selection criteria under the request~~
2 ~~for qualifications, an evaluation of each person's or firm's proposed~~
3 ~~procedures to carry out the agent's subcontractor selection plan.~~

4 ~~(c) The agent shall include in its contract with the selected person~~
5 ~~or firm either:~~

6 ~~(i) If the agent included its subcontractor selection plan in the~~
7 ~~request for qualifications, the agent's subcontractor selection plan and the~~
8 ~~procedures proposed by the selected person or firm in submitting its~~
9 ~~qualifications with those modifications to the procedures as the agent and~~
10 ~~the selected person or firm agree.~~

11 ~~(ii) If the agent did not include its subcontractor selection plan in~~
12 ~~the request for qualifications, the subcontractor selection plan proposed by~~
13 ~~the selected person or firm in submitting its qualifications with those~~
14 ~~modifications as the agent and the selected person or firm agree.~~

15 ~~(d) In making the selection of subcontractors, the person or firm~~
16 ~~selected to perform the construction services shall use the subcontractor~~
17 ~~selection plan and any procedures included in its contract.~~

18 ~~8. The agent and the selection committee shall not request or consider~~
19 ~~fees, price, man hours or any other cost information at any point in the~~
20 ~~selection process under this subsection or subsection D of this section;~~
21 ~~including the selection of the persons or firms to be interviewed, the~~
22 ~~selection of the persons or firms to be on the final list, in determining the~~
23 ~~order of preference of persons or firms on the final list or for any other~~
24 ~~purpose in the selection process.~~

25 ~~9. For construction manager at risk construction services and~~
26 ~~design-build construction services, the contract or contracts under a single~~
27 ~~request for qualifications solicitation or for design-build construction~~
28 ~~services a single request for qualifications and request for proposals~~
29 ~~solicitation shall be limited to a specific single project.~~

30 ~~(c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS~~
31 ~~SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE HIGHEST RANKING~~
32 ~~PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST RANKING PERSON OR~~
33 ~~FIRM, THE AGENT SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING THAT IT IS~~
34 ~~NOT THE HIGHEST PERSON OR FIRM ON THE FINAL LIST OR THAT ANOTHER PERSON OR~~
35 ~~FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST:~~

36 ~~(i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.~~

37 ~~(ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT~~
38 ~~MADE SUBMITTALS.~~

39 ~~(d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS~~
40 ~~SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR~~
41 ~~FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE AGENT SHALL SEND~~
42 ~~ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON~~
43 ~~THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS ARE ON THE FINAL LIST:~~

44 ~~(i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.~~

1 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
2 SUBMITTALS.

3 D. An agent shall award a ~~THE SINGLE~~ contract for professional
4 services or for construction services to one of the persons or firms on the
5 final list for that contract prepared pursuant to subsection C of this
6 section UNDER THE PROCUREMENT as provided in subsection E or F of this
7 section. , except that, if fewer than the number of persons or firms on the
8 final list respond to the request for proposals pursuant to subsection F of
9 this section but at least two persons or firms on the final list submit
10 responsive proposals or if one or more of the persons or firms on the final
11 list drop out of the selection process pursuant to subsection E or F of this
12 section:

13 1. ~~If there are three or more remaining persons or firms, the agent~~
14 ~~shall proceed with the selection process.~~

15 2. ~~If there are only two remaining persons or firms, as the agent~~
16 ~~deems necessary and appropriate, the agent may elect to proceed with the~~
17 ~~selection process with the two persons or firms or may elect to terminate the~~
18 ~~selection process and may elect to readvertise pursuant to subsection C of~~
19 ~~this section.~~

20 3. ~~If there is only one remaining person or firm, the agent may award~~
21 ~~the contract to a single person or firm if the agent determines in writing~~
22 ~~that the fee negotiated pursuant to subsection E of this section is fair and~~
23 ~~reasonable and that either other prospective persons or firms had reasonable~~
24 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

25 E. For each contract included in the request for qualifications, the
26 agent shall enter into separate negotiations for the contract with the
27 highest qualified person or firm on the final list for that contract
28 determined pursuant to subsection C of this section for the professional
29 services or for the construction services. However, if the request for
30 qualifications is for multiple contracts and specifies that all of the
31 multiple contracts will be awarded to a single contractor, there may be a
32 single negotiation for all of the multiple contracts. The negotiations shall
33 include consideration of compensation and other contract terms that the agent
34 determines to be fair and reasonable to the agent. In making this decision,
35 the agent shall take into account the estimated value, the scope, the
36 complexity and the nature of the professional services or construction
37 services to be rendered. THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS
38 OR FIRMS ON THE FINAL LIST AS FOLLOWS:

39 1. THE PROCUREMENT IS FOR A SINGLE CONTRACT FOR CONSTRUCTION SERVICES
40 OR PROFESSIONAL SERVICES, AND THERE IS ONE FINAL LIST.

41 2. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND
42 OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR AND REASONABLE TO
43 THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE INTO ACCOUNT THE
44 ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL
45 SERVICES OR CONSTRUCTION SERVICES TO BE RENDERED.

1 3. THE AGENT SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED
2 PERSON OR FIRM ON THE FINAL LIST.

3 4. If the agent is not able to negotiate a satisfactory contract with
4 the highest qualified person or firm on the final list, at compensation and
5 on other contract terms the agent determines to be fair and reasonable, the
6 agent shall formally terminate negotiations with that person or firm. The
7 agent ~~may~~ SHALL THEN undertake negotiations with the next most qualified
8 person or firm on the final list in sequence until an agreement is reached or
9 a determination is made to reject all persons or firms on the final list. If
10 ~~a contract for construction services is entered into pursuant to this~~
11 ~~subsection:~~

12 ~~1. If the contract is for construction manager at risk construction~~
13 ~~services and includes preconstruction services by the contractor or if the~~
14 ~~contract is for design-build construction services, the agent shall enter~~
15 ~~into a written contract with the contractor for preconstruction services~~
16 ~~under which contract the agent shall pay the contractor a fee for~~
17 ~~preconstruction services in an amount agreed by the agent and the contractor,~~
18 ~~and the agent shall not request or obtain a fixed price or a guaranteed~~
19 ~~maximum price for the construction from the contractor or enter into a~~
20 ~~construction contract with the contractor until after the agent has entered~~
21 ~~into the written contract for preconstruction services and a preconstruction~~
22 ~~services fee.~~

23 ~~2. Construction shall not commence until the agent and contractor~~
24 ~~agree in writing on either a fixed price that the agent will pay for the~~
25 ~~construction to be commenced or a guaranteed maximum price for the~~
26 ~~construction to be commenced.~~

27 5. IF IN A PROCUREMENT UNDER THIS SECTION THE AGENT TERMINATES
28 NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST AND COMMENCES
29 NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON THE FINAL LIST, THE AGENT SHALL
30 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR
31 THE CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED BY THE FINAL LIST
32 WITH ANY PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT HAS TERMINATED
33 NEGOTIATIONS.

34 F. As an alternative to subsection E of this section, an agent may
35 award A SINGLE CONTRACT FOR design-build construction services or
36 job-order-contracting construction services as follows:

37 1. The agent shall use the selection committee appointed for the
38 request for qualifications pursuant to subsection C of this section.

39 2. The agent shall issue a request for proposals to the persons or
40 firms on the final list developed pursuant to subsection C of this section.

41 3. ~~For design-build construction services and job-order-contracting~~
42 ~~construction services,~~ The request for proposals shall include:

43 (a) The agent's project schedule and project final BUDGET FOR design
44 and construction ~~budget~~ or life cycle budget for a procurement that includes
45 maintenance services or operations services.

1 (b) A statement that the contract ~~or contracts~~ will be awarded to the
2 offeror whose proposal receives the highest number of points under a scoring
3 method.

4 (c) A description of the scoring method, including a list of the
5 factors in the scoring method and the number of points allocated to each
6 factor. The factors in the scoring method ~~shall~~ MAY include:

7 (i) For design-build construction services only, demonstrated
8 compliance with the design requirements.

9 (ii) Offeror qualifications.

10 (iii) Offeror financial capacity.

11 (iv) Compliance with the agent's project schedule.

12 (v) For design-build construction services only, if the request for
13 proposals specifies that the agent will spend its project budget and not more
14 than its project budget and is seeking the best proposal for the project
15 budget, compliance of the offeror's price or life cycle price for
16 procurements that include maintenance services, operations services or
17 finance services with the agent's budget as prescribed in the request for
18 proposals.

19 (vi) For design-build construction services if the request for
20 proposals does not contain the specifications prescribed in item (v) and for
21 job-order-contracting construction services, the price or life cycle price
22 for procurements that include maintenance services, operations services or
23 finance services.

24 (vii) An offeror quality management plan.

25 (viii) Other evaluation factors THAT DEMONSTRATE COMPETENCE AND
26 QUALIFICATIONS FOR THE TYPE OF CONSTRUCTION SERVICES IN THE REQUEST FOR
27 PROPOSALS as determined by the agent, if any.

28 (d) For design-build construction services only, the design
29 requirements.

30 (e) A requirement that each offeror submit separately a technical
31 proposal and a price proposal and that the offeror's entire proposal be
32 responsive to the requirements in the request for proposals. For
33 design-build construction services, the price in the price proposal shall be
34 a fixed price or a guaranteed maximum price.

35 (f) A statement that in applying the scoring method the selection
36 committee will separately evaluate the technical proposal and the price
37 proposal and will evaluate and score the technical proposal before opening
38 the price proposal.

39 (g) If the agent conducts discussions pursuant to paragraph 5 of this
40 subsection, a statement that discussions will be held and a requirement that
41 each offeror submit a preliminary technical proposal before the discussions
42 are held.

43 4. If the agent determines to conduct discussions pursuant to
44 paragraph 5 of this subsection, each offeror shall submit a preliminary
45 technical proposal to the agent before those discussions are held.

1 5. If determined by the agent and included by the agent in the request
2 for proposals, the selection committee shall conduct discussions with all
3 ~~persons or firms~~ OFFERORS that submit preliminary technical proposals.
4 Discussions shall be for the purpose of clarification to ensure full
5 understanding of, and responsiveness to, the solicitation requirements.
6 Offerors shall be accorded fair treatment with respect to any opportunity for
7 discussion and for clarification by the owner. Revision of preliminary
8 technical proposals shall be permitted after submission of preliminary
9 technical proposals and before award for the purpose of obtaining best and
10 final proposals. In conducting any discussions, information derived from
11 proposals submitted by competing offerors shall not be disclosed to other
12 competing offerors.

13 6. After completion of any discussions pursuant to paragraph 5 of this
14 subsection or if no discussions are held, each offeror shall submit
15 separately the offeror's final technical proposal and its price proposal.

16 7. Before opening any price proposal, the selection committee shall
17 open the final technical proposals, evaluate the final technical proposals
18 and score the final technical proposals using the scoring method in the
19 request for proposals. No other factors or criteria may be used in the
20 evaluation and scoring.

21 8. After completion of the evaluation and scoring of all final
22 technical proposals, the selection committee shall open the price proposals,
23 evaluate the price proposals, score the price proposals and complete the
24 scoring of the entire proposals using the scoring method in the request for
25 proposals. No other factors or criteria may be used in the evaluation and
26 scoring.

27 9. The agent shall award the contract or contracts to the responsive
28 and responsible offeror whose proposal receives the highest score under the
29 method of scoring in the request for proposals. No other factors or criteria
30 may be used in the evaluation. BEFORE OR AT THE SAME TIME AS THE AGENT
31 NOTIFIES THE WINNING OFFEROR THAT IT HAS WON, THE AGENT SHALL SEND ACTUAL
32 NOTICE TO EACH OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT
33 ANOTHER OFFEROR HAS WON.

34 10. The contract or contracts file shall contain the basis on which the
35 award is made, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED
36 UNDER SUBSECTION G OF THIS SECTION.

37 11. For design-build construction services only, the agent shall award
38 a stipulated fee equal to a percentage, as prescribed in the request for
39 proposals, of the agent's project final BUDGET FOR design and construction
40 budget, as prescribed in the request for proposals, but not less than
41 two-tenths of one per cent of the project final BUDGET FOR design and
42 construction ~~budget~~ to each final list offeror who provides a responsive, but
43 unsuccessful, proposal. If the agent does not award a contract, all
44 responsive final list offerors shall receive the stipulated fee based on the
45 owner's ~~estimate of the~~ project final BUDGET FOR design and construction

1 ~~budget~~ as included in the request for proposals. The agent shall pay the
2 stipulated fee to each offeror within ninety days after the award of the
3 initial contract or the decision not to award a contract. In consideration
4 for paying the stipulated fee, the agent may use any ideas or information
5 contained in the proposals in connection with any contract awarded for the
6 project, or in connection with a subsequent procurement, without any
7 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
8 Notwithstanding the other provisions of this paragraph, an ~~unsuccessful-final~~
9 ~~list~~ offeror may elect to waive the stipulated fee. If an ~~unsuccessful-final~~
10 ~~list~~ offeror elects to waive the stipulated fee, the agent may not use ideas
11 and information contained in the offeror's proposal, except that this
12 restriction does not prevent the agent from using any idea or information if
13 the idea or information is also included in a proposal of an offeror that
14 accepts the stipulated fee.

15 G. AT A MINIMUM, THE AGENT SHALL RETAIN THE FOLLOWING FOR EACH
16 PROCUREMENT UNDER THIS SECTION:

17 1. FOR EACH REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS UNDER
18 SUBSECTION C OF THIS SECTION:

19 (a) IF INTERVIEWS WERE NOT HELD:

20 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
21 AND, IF DIFFERENT, THE SUBMITTAL OF THE PERSON OR FIRM WITH WHICH THE AGENT
22 ENTERS INTO A CONTRACT.

23 (ii) THE FINAL LIST.

24 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
25 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
26 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

27 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
28 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
29 RANK OR SCORE.

30 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
31 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
32 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
33 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE AGENT, THIS
34 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
35 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
36 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
37 AGENT.

38 (b) IF INTERVIEWS WERE HELD:

39 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
40 LIST AND, IF DIFFERENT, ALL SUBMITTALS OF THE PERSON OR FIRM WITH WHICH THE
41 AGENT ENTERS INTO A CONTRACT.

42 (ii) THE FINAL LIST.

43 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
44 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
45 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

1 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
2 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
3 SCORE.

4 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
5 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
6 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
7 WERE INTERVIEWED. AT THE ELECTION OF THE AGENT, THIS DOCUMENTATION MAY BE IN
8 THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE,
9 IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR INDIVIDUAL SELECTION COMMITTEE
10 MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE AGENT.

11 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
12 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
13 BE INTERVIEWED.

14 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
15 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
16 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
17 LIST TO BE INTERVIEWED.

18 (viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON
19 EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
20 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
21 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
22 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE AGENT,
23 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
24 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR THE
25 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
26 AGENT.

27 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
28 F OF THIS SECTION:

29 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
30 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND, IF
31 DIFFERENT, THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM WITH WHICH THE
32 AGENT ENTERS INTO A CONTRACT.

33 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
34 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
35 INCLUDED IN THE REQUEST FOR PROPOSALS.

36 (c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A
37 PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

38 (d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR
39 IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT
40 SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE
41 OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE AGENT, THIS
42 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
43 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
44 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
45 AGENT.

1 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
2 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

3 ~~G.~~ 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, until an award
4 and execution of a contract by an agent THE AGENT AWARDS A CONTRACT OR
5 TERMINATES THE PROCUREMENT, only the name of each person or firm on the final
6 list developed pursuant to subsection C of this section may be made available
7 to the public. All other information received by the agent in response to
8 the request for qualifications PURSUANT TO SUBSECTION C OF THIS SECTION or
9 contained in the proposals SUBMITTED PURSUANT TO SUBSECTION F OF THIS SECTION
10 shall be confidential in order to avoid disclosure of the contents that may
11 be prejudicial to competing SUBMITTERS AND offerors during the selection
12 process. ~~The proposals shall be open to public inspection after the contract~~
13 ~~is awarded and the agent has executed the contract.~~

14 2. AFTER THE AGENT AWARDS THE CONTRACT OR TERMINATES THE PROCUREMENT,
15 THE AGENT SHALL MAKE AVAILABLE TO THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1,
16 ARTICLE 2 AT A MINIMUM ALL OF THE ITEMS THAT THE AGENT IS REQUIRED TO RETAIN
17 UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN
18 RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND
19 THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
20 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
21 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION.

22 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
23 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
24 CONTRACT OR TERMINATED THE PROCUREMENT. AT A MINIMUM THE PROPOSALS SUBMITTED
25 UNDER SUBSECTION F OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER
26 SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE
27 AGENT HAS ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT.

28 4. To the extent that the offeror designates and the agent concurs,
29 trade secrets and other proprietary data contained in a proposal remain
30 confidential.

31 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
32 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
33 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
34 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

35 ~~H.~~ I. An agent may cancel a request for qualifications or a request
36 for proposals, ~~or~~ reject in whole or in part any or all SUBMITTALS OR
37 proposals, OR DETERMINE NOT TO ENTER INTO A CONTRACT as specified in the
38 solicitation if ~~it~~ THE AGENT DETERMINES IN THE AGENT'S ABSOLUTE AND SOLE
39 DISCRETION THAT THE ACTION is in the best interest of the agent. The agent
40 shall make the reasons for cancellation, ~~or~~ rejection OR DETERMINATION NOT TO
41 ENTER INTO A CONTRACT part of the contract file.

42 ~~I. Notwithstanding any other law:~~

43 ~~1. The contractor for design-build or job order contracting~~
44 ~~construction services is not required to be registered to perform design~~
45 ~~services pursuant to title 32, chapter 1 if the person or firm actually~~

1 performing the design services on behalf of the contractor is appropriately
2 registered.

3 ~~2. The contractor for construction manager at risk, design-build or~~
4 ~~job-order contracting construction services shall be licensed to perform~~
5 ~~construction pursuant to title 32, chapter 10.~~

6 ~~3. For each project for horizontal construction under a design-build~~
7 ~~or construction manager at risk construction services contract, the licensed~~
8 ~~contractor performing the contract shall perform, with the contractor's own~~
9 ~~organization, construction work that amounts to not less than forty five per~~
10 ~~cent of the total contract price for construction. For the purposes of this~~
11 ~~paragraph, the total contract price for construction does not include the~~
12 ~~cost of preconstruction services, design services or any other related~~
13 ~~services or the cost to procure any right of way or other cost of~~
14 ~~condemnation.~~

15 ~~4. There shall be a separate request for qualifications under~~
16 ~~subsection C of this section for each contract for horizontal construction~~
17 ~~construction manager at risk construction services or horizontal construction~~
18 ~~design-build construction services.~~

19 ~~J. For job-order contracting construction services only:~~

20 ~~1. The maximum dollar amount of an individual job order shall be one~~
21 ~~million dollars or such higher or lower amount prescribed by the agent in an~~
22 ~~action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted~~
23 ~~by the agent as the maximum amount of an individual job order. Requirements~~
24 ~~shall not be artificially divided or fragmented in order to constitute a job~~
25 ~~order that satisfies this requirement.~~

26 ~~2. If the contractor subcontracts or intends to subcontract part or~~
27 ~~all of the work under a job order and if the job order construction services~~
28 ~~contract includes descriptions of standard individual tasks, standard unit~~
29 ~~prices for standard individual tasks and pricing of job orders based on the~~
30 ~~number of units of standard individual tasks in the job order:~~

31 ~~(a) The contractor has a duty to deliver promptly to each~~
32 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
33 ~~part of the work under one or more job orders:~~

34 ~~(i) A copy of the descriptions of all standard individual tasks on~~
35 ~~which the subcontractor is invited to bid.~~

36 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
37 ~~which the subcontractor is invited to bid.~~

38 ~~(b) If not previously delivered to the subcontractor, the contractor~~
39 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
40 ~~or that has agreed to do any of the work included in any job order:~~

41 ~~(i) A copy of the description of each standard individual task that is~~
42 ~~included in the job order and that the subcontractor is invited to perform.~~

43 ~~(ii) The number of units of each standard individual task that is~~
44 ~~included in the job order and that the subcontractor is invited to perform.~~

1 ~~(iii) The standard unit price for each standard individual task that~~
2 ~~is included in the job order and that the subcontractor is invited to~~
3 ~~perform.~~

4 ~~K. Notwithstanding anything to the contrary in this chapter, an agent~~
5 ~~shall not procure any horizontal construction using the~~
6 ~~construction manager at risk, design build or job order contracting method of~~
7 ~~project delivery after June 30, 2020. For purposes of this paragraph, an~~
8 ~~agent procures horizontal construction when the contract for the construction~~
9 ~~services is executed by the agent and the contractor for the~~
10 ~~construction manager at risk, design build or job order contracting~~
11 ~~construction services. If a contract is executed for construction services~~
12 ~~on or before June 30, 2020, construction services under the contract may be~~
13 ~~rendered in whole or in part after June 30, 2020.~~

14 ~~L. Notwithstanding anything to the contrary in this section or this~~
15 ~~title, an agent shall not:~~

16 ~~1. Enter into a contract as contractor to provide~~
17 ~~construction manager at risk construction services, design build construction~~
18 ~~services or job order contracting construction services.~~

19 ~~2. Contract with itself, with another agent, with this state or with~~
20 ~~any other governmental unit of this state or the federal government for the~~
21 ~~agent to provide construction manager at risk construction services,~~
22 ~~design build construction services or job order contracting construction~~
23 ~~services.~~

24 ~~M. The prohibitions prescribed in subsection L of this section do not~~
25 ~~prohibit an agent from providing construction for itself as provided by law.~~

26 ~~N. The agent shall include in each contract for construction services~~
27 ~~the full street or physical address of each separate location at which the~~
28 ~~construction will be performed and a requirement that the contractor and each~~
29 ~~subcontractor at any level include in each of its subcontracts the same~~
30 ~~address information. The contractor and each subcontractor at any level~~
31 ~~shall include in each subcontract the full street or physical address of each~~
32 ~~separate location at which construction work will be performed.~~

33 ~~J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND~~
34 ~~PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR~~
35 ~~PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW~~
36 ~~THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF~~
37 ~~ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO~~
38 ~~PROCUREMENTS UNDER THIS SECTION.~~

39 ~~0. K. For the purposes of this section, "professional services"~~
40 ~~includes architect services, engineer services, landscape architect services,~~
41 ~~assayer services, geologist services and land surveying services and any~~
42 ~~combination of those services.~~

1 Sec. 12. Renumber

2 Sections 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 and
3 34-611, Arizona Revised Statutes, are renumbered as sections 34-606, 34-607,
4 34-608, 34-609, 34-610, 34-611, 34-612 and 34-613, respectively.

5 Sec. 13. Title 34, chapter 6, article 1, Arizona Revised Statutes, is
6 amended by adding new sections 34-604 and 34-605, to read:

7 34-604. Procurement of multiple contracts for certain
8 job-order-contracting construction services and
9 certain professional services; definition

10 A. EXCEPT FOR MULTIPLE CONTRACTS AN AGENT PROCURES PURSUANT TO SECTION
11 34-103, SECTION 34-606 OR THIS SECTION, AN AGENT SHALL NOT PROCURE IN A
12 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
13 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
14 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
15 PROCUREMENT. AN AGENT MAY PROCURE UNDER THIS SECTION:

16 1. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
17 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

18 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
19 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
20 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

21 B. AN AGENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER THIS
22 SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND
23 QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES
24 PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

25 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

26 1. THE FOLLOWING REQUIREMENTS APPLY:

27 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
28 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
29 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
30 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
31 SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN DETERMINING THE ORDER
32 OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR FOR ANY OTHER PURPOSE IN
33 THE SELECTION PROCESS.

34 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
35 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
36 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
37 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE AGENT
38 FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
39 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

40 (c) IF THE AGENT ENTERS INTO THE NUMBER OF MULTIPLE CONTRACTS BEING
41 PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL
42 SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT TIME THE AGENT
43 MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL LIST IN THE PROCUREMENT AS
44 THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT WITH ANY OTHER PERSON OR
45 FIRM THAT PARTICIPATED IN THE PROCUREMENT.

(d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

(i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY ELECT TO TERMINATE THE PROCUREMENT.

(ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A RESOLICITATION.

(iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION COMMITTEE AS THE NEXT MOST QUALIFIED.

2. AN AGENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH PROCUREMENT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS. THIS NOTICE SHALL BE PUBLISHED BY ADVERTISING IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE AGENT IS LOCATED FOR TWO CONSECUTIVE PUBLICATIONS IF IT IS A WEEKLY NEWSPAPER OR FOR TWO PUBLICATIONS THAT ARE AT LEAST SIX BUT NO MORE THAN TEN DAYS APART IF IT IS A DAILY NEWSPAPER. THE PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR QUALIFICATIONS SHALL:

(a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR WILL BE AWARDED:

(i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE

1 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
2 A SEPARATE PERSON OR FIRM.

3 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
4 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
5 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
6 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
7 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
8 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
9 FIRM.

10 (b) STATE AS TO FINAL LISTS:

11 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
12 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
13 LIST OF AT LEAST THREE BUT NO MORE THAN FIVE PERSONS OR FIRMS.

14 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR
15 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
16 OR FIRMS OR IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
17 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
18 SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST, WHICH
19 SHALL BE THE SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A
20 NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

21 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR DIFFERENT
22 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE
23 WILL BE A SEPARATE FINAL LIST FOR EACH TYPE OF PROFESSIONAL SERVICES AND THAT
24 THE NUMBER OF PERSONS OR FIRMS ON EACH FINAL LIST WILL BE THE NUMBER OF
25 CONTRACTS THAT MAY OR WILL BE AWARDED FOR EACH TYPE OF PROFESSIONAL SERVICES
26 AND A NUMBER THAT IS DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

27 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
28 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
29 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
30 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
31 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
32 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN. ALL
33 SELECTION CRITERIA PURSUANT TO THIS SUBSECTION SHALL BE FACTORS THAT
34 DEMONSTRATE COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL
35 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES INCLUDED IN THE
36 PROCUREMENT. IF:

37 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
38 STATE THE SELECTION CRITERIA AND THE RELATIVE WEIGHT OF THE SELECTION
39 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND
40 THE REQUEST FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE
41 WEIGHT OF THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS
42 ON EACH FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE
43 FINAL LIST SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE
44 SELECTION CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR
45 FIRMS TO BE INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE

1 WHETHER THE AGENT WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
2 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
3 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
4 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
5 RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS.

6 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
7 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
8 BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND IN
9 DETERMINING THEIR ORDER ON EACH FINAL LIST.

10 (d) IF THE AGENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
11 PROCESS:

12 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
13 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
14 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
15 PERSONS OR FIRMS.

16 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR
17 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
18 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
19 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS
20 WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF
21 PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
22 QUALIFICATIONS, SHALL BE DETERMINED BY THE AGENT, AND SHALL BE THE SUM OF THE
23 NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT IS
24 DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

25 (iii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR DIFFERENT
26 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT
27 INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED
28 NUMBER OF PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE
29 REQUEST FOR QUALIFICATIONS, SHALL BE DETERMINED BY THE AGENT, SHALL BE AT
30 LEAST THREE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
31 SHALL NOT BE MORE THAN FIVE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE
32 AWARDED.

33 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
34 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
35 EITHER:

36 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
37 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
38 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
39 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
40 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

41 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
42 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE JOB-ORDER-CONTRACTING
43 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
44 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
45 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST

1 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
2 AGENT'S SUBCONTRACTOR SELECTION PLAN.

3 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
4 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
5 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND
6 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
7 IN CONNECTION WITH THE PROCUREMENT.

8 3. AN AGENT SHALL INITIATE AN APPROPRIATELY QUALIFIED SELECTION
9 COMMITTEE FOR EACH REQUEST FOR QUALIFICATIONS. THE AGENT SHALL ENSURE THAT
10 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
11 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE AGENT
12 OR AN AGENT REPRESENTATIVE WHO IS APPOINTED BY THE AGENT. THE SAME SELECTION
13 COMMITTEE SHALL FUNCTION AS TO ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
14 PROCUREMENT. IF THE AGENT IS PROCURING MULTIPLE CONTRACTS FOR PROFESSIONAL
15 SERVICES, THE AGENT SHALL DETERMINE THE NUMBER AND QUALIFICATIONS OF THE
16 SELECTION COMMITTEE MEMBERS. A SELECTION COMMITTEE FOR THE PROCUREMENT OF
17 MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL HAVE
18 NOT MORE THAN SEVEN MEMBERS, EXCEPT THAT IF THE CONTRACT INVOLVES THE AGENT
19 AND ADDITIONAL GOVERNMENTAL OR PRIVATE PARTICIPANTS, THE NUMBER OF MEMBERS OF
20 THE SELECTION COMMITTEE SHALL BE INCREASED BY ONE FOR EACH ADDITIONAL
21 PARTICIPANT, EXCEPT THAT THE MAXIMUM NUMBER OF MEMBERS OF THE SELECTION
22 COMMITTEE IS NINE. THE SELECTION COMMITTEE FOR MULTIPLE CONTRACTS FOR
23 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL INCLUDE AT LEAST ONE PERSON
24 WHO IS A SENIOR MANAGEMENT EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON
25 WHO IS AN ARCHITECT OR ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE
26 MEMBERS MAY BE EMPLOYEES OF THE AGENT OR OUTSIDE CONSULTANTS. OUTSIDE
27 CONTRACTORS, ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE SHALL
28 NOT RECEIVE COMPENSATION FROM THE AGENT FOR PERFORMING THIS SERVICE, BUT THE
29 AGENT MAY ELECT TO REIMBURSE OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS
30 FOR TRAVEL, LODGING AND OTHER EXPENSES INCURRED IN CONNECTION WITH SERVICE ON
31 A SELECTION COMMITTEE. A PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE
32 SHALL NOT BE A CONTRACTOR UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR
33 PROVIDE ANY PROFESSIONAL SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES,
34 MATERIALS OR OTHER SERVICES UNDER THE CONTRACT. THE SELECTION COMMITTEE AND
35 THE AGENT SHALL DO THE FOLLOWING:

36 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:

37 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
38 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
39 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
40 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
41 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
42 PERSONS OR FIRMS TO BE INTERVIEWED.

43 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
44 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
45 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED

1 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE AGENT
2 SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE SELECTION
3 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED TO SELECT
4 THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR ORDER ON EACH
5 FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE DIFFERENT
6 THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE THE PERSONS
7 OR FIRMS TO BE INTERVIEWED.

8 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
9 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
10 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
11 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
12 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
13 SERVICES.

14 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
15 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
16 THE PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST,
17 THE SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST
18 AND IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT
19 WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR
20 FIRMS ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
21 MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE AWARDED TO
22 SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH TYPE OF
23 PROFESSIONAL SERVICES, AND IF A PERSON OR FIRM SUBMITTED QUALIFICATIONS FOR
24 MORE THAN ONE TYPE OF PROFESSIONAL SERVICES, THE PERSON OR FIRM MAY BE ON
25 MORE THAN ONE FINAL LIST.

26 (c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
27 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR
28 FIRMS ON EACH FINAL LIST THAT THEY ARE ON THAT FINAL LIST, THE AGENT SHALL
29 SEND ACTUAL NOTICE TO THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON
30 THAT FINAL LIST:

31 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
32 FOR THAT FINAL LIST.

33 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
34 MADE SUBMITTALS FOR THAT FINAL LIST.

35 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
36 SECTION, BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE PERSONS OR
37 FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE AGENT SHALL SEND
38 ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON
39 THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS ARE ON THE FINAL LIST:

40 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

41 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
42 SUBMITTALS.

43 D. AN AGENT SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN THE REQUEST
44 FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS SECTION.

1 E. THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE
2 FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
3 COMPENSATION AND OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR
4 AND REASONABLE TO THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE
5 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
6 THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO
7 BE RENDERED. IF IN A PROCUREMENT UNDER THIS SECTION THE AGENT TERMINATES
8 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
9 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE AGENT SHALL NOT IN THAT
10 PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR THE
11 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED
12 BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE
13 AGENT HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT IS FOR:

14 1. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO A
15 SINGLE PERSON OR FIRM, THERE IS ONE FINAL LIST AND THE AGENT SHALL ENTER INTO
16 NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST. IF
17 THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST
18 QUALIFIED PERSON OR FIRM ON THE FINAL LIST, AT COMPENSATION AND ON OTHER
19 CONTRACT TERMS THE AGENT DETERMINES TO BE FAIR AND REASONABLE, THE AGENT
20 SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM
21 ON THE FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A
22 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

23 2. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
24 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS OR FOR MULTIPLE CONTRACTS
25 FOR SIMILAR PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
26 THERE IS ONE FINAL LIST AND THE AGENT SHALL ENTER INTO SEPARATE NEGOTIATIONS
27 FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON
28 THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED. IF THE AGENT
29 IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON OR FIRM WITH
30 WHOM THE AGENT HAS COMMENCED NEGOTIATIONS, THE AGENT SHALL FORMALLY TERMINATE
31 NEGOTIATIONS WITH THAT PERSON OR FIRM. THE AGENT SHALL THEN UNDERTAKE
32 NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON
33 THE FINAL LIST WITH WHOM THE AGENT IS NOT THEN NEGOTIATING AND WITH WHOM THE
34 AGENT HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE UNTIL AN AGREEMENT IS REACHED
35 FOR SOME OR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE REQUEST FOR
36 QUALIFICATIONS OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON
37 THE FINAL LIST.

38 3. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
39 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH
40 TYPE OF PROFESSIONAL SERVICES AND THE AGENT SHALL ENTER INTO SEPARATE
41 NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS
42 OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED.
43 IF THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON
44 OR FIRM WITH WHOM THE AGENT HAS COMMENCED NEGOTIATIONS, THE AGENT SHALL
45 FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE AGENT SHALL

1 THEN UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED
2 PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT IS NOT THEN NEGOTIATING
3 AND WITH WHOM THE AGENT HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE UNTIL AN
4 AGREEMENT IS REACHED FOR SOME OR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN
5 THE REQUEST FOR QUALIFICATIONS OR A DETERMINATION IS MADE TO REJECT ALL
6 PERSONS OR FIRMS ON THE FINAL LIST.

7 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, AN AGENT MAY
8 AWARD MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
9 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

10 1. THE AGENT SHALL USE THE SELECTION COMMITTEE APPOINTED FOR THE
11 REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

12 2. THE AGENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS OR
13 FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION.

14 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

15 (a) THE AGENT'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET FOR DESIGN
16 AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT INCLUDES
17 MAINTENANCE SERVICES OR OPERATIONS SERVICES.

18 (b) A STATEMENT THAT THE MULTIPLE CONTRACTS WILL BE AWARDED TO A
19 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
20 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
21 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.

22 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
23 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
24 FACTOR. THE FACTORS IN THE SCORING METHOD MAY INCLUDE:

25 (i) OFFEROR QUALIFICATIONS.

26 (ii) OFFEROR FINANCIAL CAPACITY.

27 (iii) COMPLIANCE WITH THE AGENT'S PROJECT SCHEDULE.

28 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
29 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.

30 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.

31 (vi) OTHER EVALUATION FACTORS THAT DEMONSTRATE COMPETENCE AND
32 QUALIFICATIONS FOR THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN THE
33 REQUEST FOR PROPOSALS AS DETERMINED BY THE AGENT, IF ANY.

34 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
35 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
36 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

37 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
38 COMMITTEE WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE
39 PROPOSAL AND WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING
40 THE PRICE PROPOSAL.

41 (f) IF THE AGENT CONDUCTS DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
42 SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND A REQUIREMENT THAT
43 EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL BEFORE THE DISCUSSIONS
44 ARE HELD.

1 4. IF THE AGENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
2 PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
3 TECHNICAL PROPOSAL TO THE AGENT BEFORE THOSE DISCUSSIONS ARE HELD.

4 5. IF DETERMINED BY THE AGENT AND INCLUDED BY THE AGENT IN THE REQUEST
5 FOR PROPOSALS, THE SELECTION COMMITTEE SHALL CONDUCT DISCUSSIONS WITH ALL
6 OFFERORS THAT SUBMIT PRELIMINARY TECHNICAL PROPOSALS. DISCUSSIONS SHALL BE
7 FOR THE PURPOSE OF CLARIFICATION TO ENSURE FULL UNDERSTANDING OF, AND
8 RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS. OFFERORS SHALL BE ACCORDED
9 FAIR TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSION AND FOR
10 CLARIFICATION BY THE OWNER. REVISION OF PRELIMINARY TECHNICAL PROPOSALS
11 SHALL BE PERMITTED AFTER SUBMISSION OF PRELIMINARY TECHNICAL PROPOSALS AND
12 BEFORE AWARD FOR THE PURPOSE OF OBTAINING BEST AND FINAL PROPOSALS. IN
13 CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED FROM PROPOSALS SUBMITTED BY
14 COMPETING OFFERORS SHALL NOT BE DISCLOSED TO OTHER COMPETING OFFERORS.

15 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
16 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SUBMIT
17 SEPARATELY THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND ITS PRICE PROPOSAL.

18 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
19 OPEN THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS
20 AND SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE
21 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
22 EVALUATION AND SCORING.

23 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
24 TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE PRICE PROPOSALS,
25 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
26 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
27 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
28 SCORING.

29 9. THE AGENT SHALL AWARD THE MULTIPLE CONTRACTS TO THE RESPONSIVE AND
30 RESPONSIBLE OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST SCORES UNDER THE
31 METHOD OF SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA
32 MAY BE USED IN THE EVALUATION. BEFORE OR AT THE SAME TIME AS THE AGENT
33 NOTIFIES THE WINNING OFFERORS THAT THEY HAVE WON, THE AGENT SHALL SEND ACTUAL
34 NOTICE TO EACH OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT
35 OTHER OFFERORS HAVE WON.

36 10. THE CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
37 MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED UNDER
38 SUBSECTION G OF THIS SECTION.

39 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
40 THIS SECTION OR MULTIPLE REQUESTS FOR PROPOSALS UNDER SUBSECTION F OF THIS
41 SECTION, THE AGENT SHALL RETAIN THE ITEMS IN PARAGRAPHS 1 AND 2 OF THIS
42 SUBSECTION, AS APPLICABLE, FOR EACH FINAL LIST AND EACH REQUEST FOR PROPOSALS
43 PROCUREMENT PROCESS. AT A MINIMUM, THE AGENT SHALL RETAIN THE FOLLOWING FOR
44 EACH PROCUREMENT UNDER THIS SECTION:

1 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
2 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

3 (a) IF INTERVIEWS WERE NOT HELD:

4 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
5 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS INTO A
6 CONTRACT.

7 (ii) THE FINAL LIST.

8 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
9 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
10 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

11 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
12 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
13 RANK OR SCORE.

14 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
15 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
16 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
17 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE AGENT, THIS
18 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
19 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
20 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
21 AGENT.

22 (b) IF INTERVIEWS WERE HELD:

23 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
24 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
25 INTO A CONTRACT.

26 (ii) THE FINAL LIST.

27 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
28 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
29 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

30 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
31 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
32 SCORE.

33 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
34 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
35 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
36 WERE INTERVIEWED. AT THE ELECTION OF THE AGENT, THIS DOCUMENTATION MAY BE IN
37 THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE,
38 IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR INDIVIDUAL SELECTION COMMITTEE
39 MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE AGENT.

40 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
41 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
42 BE INTERVIEWED.

43 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
44 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL

1 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
2 LIST TO BE INTERVIEWED.

3 (viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON
4 EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
5 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
6 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
7 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE AGENT,
8 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
9 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR THE
10 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
11 AGENT.

12 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
13 F OF THIS SECTION:

14 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
15 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
16 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
17 INTO A CONTRACT.

18 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
19 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
20 INCLUDED IN THE REQUEST FOR PROPOSALS.

21 (c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A
22 PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

23 (d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR
24 IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT
25 SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE
26 OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE AGENT, THIS
27 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
28 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
29 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
30 AGENT.

31 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
32 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

33 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, UNTIL CONTRACT
34 AWARD BY AN AGENT OF ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT OR
35 TERMINATION OF THE PROCUREMENT BY THE AGENT, ONLY THE NAME OF EACH PERSON OR
36 FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION MAY
37 BE MADE AVAILABLE TO THE PUBLIC AND ALL OTHER INFORMATION RECEIVED BY THE
38 AGENT IN RESPONSE TO THE REQUEST FOR QUALIFICATIONS UNDER SUBSECTION C OF
39 THIS SECTION OR CONTAINED IN PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS
40 SECTION SHALL BE CONFIDENTIAL IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS
41 THAT MAY BE PREJUDICIAL TO COMPETING SUBMITTERS AND OFFERORS DURING THE
42 SELECTION PROCESS.

43 2. AFTER THE AGENT AWARDS ALL OF THE MULTIPLE CONTRACTS IN THE
44 PROCUREMENT OR TERMINATES THE PROCUREMENT, THE AGENT SHALL MAKE AVAILABLE TO
45 THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A MINIMUM ALL OF THE

1 ITEMS THAT THE AGENT IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS
2 SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR
3 PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND THE DOCUMENT OR DOCUMENTS
4 PRESCRIBED IN SUBSECTION G, PARAGRAPH 1, SUBDIVISION (a), ITEM (v) AND
5 SUBDIVISION (b), ITEMS (v) AND (viii) AND PARAGRAPH 2, SUBDIVISION (d) OF
6 THIS SECTION.

7 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
8 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
9 CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT OR THE AGENT
10 HAS TERMINATED THE PROCUREMENT. AT A MINIMUM THE PROPOSALS SUBMITTED UNDER
11 SUBSECTION F OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER
12 SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE
13 AGENT HAS ENTERED INTO A CONTRACT FOR ALL OF THE CONTRACTS IN THE PROCUREMENT
14 OR THE AGENT HAS TERMINATED THE PROCUREMENT.

15 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE AGENT CONCURS,
16 TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL SHALL REMAIN
17 CONFIDENTIAL.

18 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
19 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
20 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
21 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

22 I. AN AGENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST FOR
23 PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR PROPOSALS, OR
24 DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE CONTRACTS AS
25 SPECIFIED IN THE SOLICITATION IF THE AGENT DETERMINES IN ITS ABSOLUTE AND
26 SOLE DISCRETION THAT SUCH ACTION IS IN THE BEST INTEREST OF THE AGENT. THE
27 AGENT SHALL MAKE THE REASONS FOR CANCELLATION, REJECTION OR DETERMINATION NOT
28 TO ENTER INTO CONTRACTS PART OF THE CONTRACT FILE.

29 J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
30 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
31 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW
32 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
33 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
34 PROCUREMENTS UNDER THIS SECTION.

35 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
36 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
37 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
38 OF THOSE SERVICES.

39 34-605. Requirements applicable to construction services and
40 professional services and to contracts for
41 construction services and professional services;
42 definition

43 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
44 ENTERED INTO AS THE RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR

1 34-606 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES INCLUDED IN
2 EACH PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606.

3 B. IF A PROCUREMENT UNDER SECTION 34-603 IS FOR
4 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
5 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 34-603,
6 SUBSECTION E OR IF A PROCUREMENT UNDER SECTION 34-606 IS FOR
7 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
8 CONSTRUCTION SERVICES, THE AGENT SHALL ENTER INTO A WRITTEN CONTRACT WITH THE
9 CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE AGENT SHALL PAY THE
10 CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE
11 AGENT AND THE CONTRACTOR, AND THE AGENT SHALL NOT REQUEST OR OBTAIN A FIXED
12 PRICE OR A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR
13 OR ENTER INTO A CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE
14 AGENT HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND
15 A PRECONSTRUCTION SERVICES FEE.

16 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
17 RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606, CONSTRUCTION
18 SHALL NOT COMMENCE UNTIL THE AGENT AND CONTRACTOR AGREE IN WRITING ON EITHER
19 A FIXED PRICE THAT THE AGENT WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR
20 A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION TO BE COMMENCED. THE
21 CONSTRUCTION TO BE COMMENCED MAY BE THE ENTIRE PROJECT OR MAY BE ONE OR MORE
22 PHASED PARTS OF THE PROJECT.

23 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
24 A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606 SHALL HAVE A TERM NOT
25 EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT AWARD BY THE AGENT OF THE
26 FIRST CONTRACT UNDER THE PROCUREMENT, EXCEPT THAT THE CONTRACT MAY CONTINUE
27 IN EFFECT AFTER THE FIVE YEAR TERM FOR PROFESSIONAL SERVICES ON PROJECTS ON
28 WHICH THE RENDERING OF PROFESSIONAL SERVICES COMMENCES WITHIN THE FIVE YEAR
29 TERM.

30 E. NOTWITHSTANDING ANY OTHER LAW:

31 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
32 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
33 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
34 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
35 REGISTERED.

36 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
37 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
38 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

39 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

40 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
41 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE AGENT IN AN
42 ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A RULE ADOPTED
43 BY THE AGENT AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL JOB ORDER. REQUIREMENTS
44 SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO CONSTITUTE A JOB
45 ORDER THAT SATISFIES THIS REQUIREMENT.

1 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
2 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
3 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
4 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
5 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
6 ORDER:

7 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
8 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
9 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

10 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
11 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

12 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
13 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

14 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
15 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
16 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

17 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
18 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

19 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
20 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

21 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
22 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
23 PERFORM.

24 G. THE FOLLOWING APPLY TO HORIZONTAL CONSTRUCTION:

25 1. NOTWITHSTANDING THIS CHAPTER, AN AGENT SHALL NOT PROCURE ANY
26 HORIZONTAL CONSTRUCTION USING THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD
27 OR JOB-ORDER-CONTRACTING METHOD OF PROJECT DELIVERY AFTER JUNE 30, 2020. FOR
28 PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES HORIZONTAL CONSTRUCTION WHEN
29 THE CONTRACT FOR THE CONSTRUCTION SERVICES IS EXECUTED BY THE AGENT AND THE
30 CONTRACTOR FOR THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
31 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES. IF A CONTRACT IS EXECUTED FOR
32 CONSTRUCTION SERVICES ON OR BEFORE JUNE 30, 2020, CONSTRUCTION SERVICES UNDER
33 THE CONTRACT MAY BE RENDERED IN WHOLE OR IN PART AFTER JUNE 30, 2020.

34 2. FOR EACH HORIZONTAL CONSTRUCTION PROJECT UNDER A DESIGN-BUILD OR
35 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES CONTRACT, THE LICENSED
36 CONTRACTOR PERFORMING THE CONTRACT SHALL PERFORM, WITH THE CONTRACTOR'S OWN
37 ORGANIZATION, CONSTRUCTION WORK THAT AMOUNTS TO NOT LESS THAN FORTY-FIVE PER
38 CENT OF THE TOTAL CONTRACT PRICE FOR THE CONSTRUCTION, EXCEPT THAT FOR LIGHT
39 RAIL THE SELF-PERFORMANCE PERCENTAGE SHALL BE NOT LESS THAN THIRTY PER CENT.

40 3. A PROJECT IS HORIZONTAL CONSTRUCTION IF MORE THAN ONE-HALF OF THE
41 TOTAL CONTRACT PRICE FOR THE CONSTRUCTION IS FOR HORIZONTAL CONSTRUCTION.
42 PROJECT ELEMENTS SHALL NOT BE ARTIFICIALLY ADDED IN ORDER TO MAKE A PROJECT
43 NOT HORIZONTAL CONSTRUCTION AND SHALL NOT BE ARTIFICIALLY DELETED IN ORDER TO
44 MAKE A PROJECT HORIZONTAL CONSTRUCTION.

1 4. THE TOTAL CONTRACT PRICE FOR THE CONSTRUCTION DOES NOT INCLUDE THE
2 COST OF PRECONSTRUCTION SERVICES, DESIGN SERVICES OR ANY OTHER RELATED
3 SERVICES OR THE COST TO PROCURE ANY RIGHT-OF-WAY OR OTHER COST OF
4 CONDEMNATION.

5 H. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
6 TITLE, AN AGENT SHALL NOT:

7 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
8 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
9 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

10 2. CONTRACT WITH ITSELF, WITH ANOTHER AGENT, WITH THIS STATE OR WITH
11 ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL GOVERNMENT FOR THE
12 AGENT TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES,
13 DESIGN-BUILD CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
14 SERVICES.

15 I. THE PROHIBITIONS PRESCRIBED IN SUBSECTION H OF THIS SECTION DO NOT
16 PROHIBIT AN AGENT FROM PROVIDING CONSTRUCTION FOR ITSELF AS PROVIDED BY LAW.

17 J. THE AGENT SHALL INCLUDE IN EACH CONTRACT FOR CONSTRUCTION SERVICES
18 THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH THE
19 CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR AND EACH
20 SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS SUBCONTRACTS THE SAME
21 ADDRESS INFORMATION. THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL
22 SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET OR PHYSICAL ADDRESS OF EACH
23 SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL BE PERFORMED.

24 K. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
25 PROCURED UNDER THIS CHAPTER:

26 1. THE CONTRACTOR PERFORMING THE CONSTRUCTION SERVICES IS PERMITTED TO
27 SELF-PERFORM PART OF THE CONSTRUCTION WORK IF AND TO THE EXTENT AGREED IN
28 WRITING BY THE AGENT AND THE CONTRACTOR. THE AGENT MAY USE METHODS OTHER
29 THAN COMPETITIVE BIDDING TO ASSURE ITSELF THAT THE PRICE THE AGENT PAYS TO
30 THE CONTRACTOR FOR SELF-PERFORMED WORK IS FAIR AND REASONABLE. PERMITTED
31 METHODS TO EVALUATE FAIRNESS AND REASONABLENESS OF THE PRICE OF
32 SELF-PERFORMED WORK INCLUDE EVALUATION OF THE CONTRACTOR'S PROPOSED SCOPE OF
33 WORK AND PRICE FOR SELF-PERFORMED WORK BY AN ESTIMATOR WHO IS HIRED AND PAID
34 BY THE AGENT, WHO IS INDEPENDENT OF THE CONTRACTOR AND WHO MAY BE AN EMPLOYEE
35 OF THE AGENT. ALTHOUGH THE AGENT MAY ELECT TO SO REQUIRE, NOTHING IN THIS
36 CHAPTER, THIS TITLE OR ANY OTHER LAW SHALL BE CONSTRUED OR INTERPRETED TO
37 REQUIRE THE AGENT TO REQUIRE A CONTRACTOR DESIRING TO SELF-PERFORM PART OF
38 THE CONSTRUCTION WORK TO COMPETITIVELY BID THAT PART OF THE CONSTRUCTION WORK
39 AGAINST OTHER CONTRACTORS IN A BID COMPETITION.

40 2. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION WORK TO BE
41 PERFORMED BY SUBCONTRACTORS AND DO NOT APPLY TO CONSTRUCTION WORK THAT THE
42 AGENT AND THE CONTRACTOR AGREE IN WRITING WILL BE SELF-PERFORMED BY THE
43 CONTRACTOR:

44 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
45 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION

1 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
2 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
3 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
4 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
5 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
6 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

7 (b) THE AGENT SHALL INCLUDE IN EACH CONTRACT:

8 (i) IF THE AGENT INCLUDED ITS SUBCONTRACTOR SELECTION PLAN IN THE
9 REQUEST FOR QUALIFICATIONS, THE AGENT'S SUBCONTRACTOR SELECTION PLAN AND THE
10 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN PROPOSED BY
11 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
12 MODIFICATIONS TO THE PROCEDURES AS THE AGENT AND THE SELECTED PERSON OR FIRM
13 AGREE.

14 (ii) IF THE AGENT DID NOT INCLUDE ITS SUBCONTRACTOR SELECTION PLAN IN
15 THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION PLAN PROPOSED BY
16 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
17 MODIFICATIONS AS THE AGENT AND THE SELECTED PERSON OR FIRM AGREE.

18 (c) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
19 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
20 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

21 L. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
22 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
23 PROTESTS RELATING TO PROCUREMENTS UNDER THIS CHAPTER THE AGENT SHALL FOLLOW
24 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
25 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
26 PROCUREMENTS UNDER THIS SECTION. IF THE AGENT DOES HAVE A PROCUREMENT
27 PROTEST POLICY AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED
28 BY THE AGENT, THE AGENT MAY CHOOSE TO MAKE INFORMATION RELATING TO EACH
29 PROCUREMENT AVAILABLE EARLIER THAN REQUIRED UNDER SECTION 34-603, SUBSECTION
30 H AND SECTION 34-604, SUBSECTION H IF THE AGENT DETERMINES THE RELEASE OF THE
31 INFORMATION IS NECESSARY TO ADEQUATELY FOLLOW AND MANAGE ITS PROCUREMENT
32 PROTEST POLICY AND PROCEDURES.

33 M. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
34 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
35 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
36 OF THOSE SERVICES.

37 Sec. 14. Section 34-608, Arizona Revised Statutes, as renumbered by
38 this act, is amended to read:

39 34-608. Bid security for design-build and job-order-contracting
40 construction services

41 A. As a guarantee that the contractor will enter into a contract, bid
42 security is required for all design-build construction services and all
43 job-order-contracting construction services awarded by an agent by
44 competitive sealed proposals pursuant to section 34-603, subsection F OR
45 34-604, SUBSECTION F if the agent estimates that the budget for construction,

1 excluding the cost of any finance services, maintenance services, operations
2 services, design services, preconstruction services or other related
3 services, will be more than the amount prescribed in section 41-2535,
4 subsection D. Each proposal for design-build construction services or
5 job-order-contracting construction services shall be accompanied by a
6 certified check, cashier's check or surety bond. The bid security amount for
7 design-build construction services shall be an amount equal to ten per cent
8 of the agent's budget for construction, excluding any finance services,
9 maintenance services, operations services, design services, preconstruction
10 services or other related services, for the project as stated in the request
11 for proposals. The bid security amount for job-order-contracting
12 construction services shall be the amount determined by the agent and stated
13 in the request for proposals and shall not be more than ten per cent of the
14 agent's reasonably estimated budget for construction that the agent believes
15 is likely to actually be done during the first year of the
16 job-order-contracting contract, excluding any finance services, maintenance
17 services, operations services, design services, preconstruction services or
18 other related services that are included in the contract.

19 B. The agent shall return the certified check, cashier's check or
20 surety bond to the contractors whose proposals are not accepted and to the
21 successful contractor on the execution of satisfactory payment and
22 performance bonds, insurance and the contract as provided in this chapter.

23 C. Notwithstanding any other statute, the surety bond shall be
24 executed solely by a surety company or companies holding a certificate of
25 authority to transact surety business in this state issued by the director of
26 the department of insurance pursuant to title 20, chapter 2, article 1. The
27 bond shall not be executed by an individual surety or sureties, even if the
28 requirements of section 7-101 are satisfied.

29 D. The conditions and provisions of the surety bond regarding the
30 surety's obligations shall follow the following form:

31 Now, therefore, if the obligee accepts the proposal of the
32 principal and the principal enters into a contract with the
33 obligee in accordance with the terms of the proposal and gives
34 the bonds and certificates of insurance as specified in the
35 standard specifications with good and sufficient surety for the
36 faithful performance of the contract and for the prompt payment
37 of labor and materials furnished in the prosecution of the
38 contract, or in the event of the failure of the principal to
39 enter into the contract and give the bonds and certificates of
40 insurance, if the principal pays to the obligee the difference
41 not to exceed the penalty of the bond between the amount
42 specified in the proposal and any larger amount for which the
43 obligee may contract in good faith with another party to perform
44 the work covered by the proposal, this obligation is void.
45 Otherwise it remains in full force and effect. Provided,

1 however, that this bond is executed pursuant to section ~~34-606~~
2 34-608, Arizona Revised Statutes, and all liabilities on this
3 bond shall be determined in accordance with the provisions of
4 the section to the extent as if it were copied at length in this
5 agreement.

6 E. If the request for proposals requires security, noncompliance
7 requires that the agent reject the proposal for noncompliance with the
8 security requirement, unless the agent determines that the bid fails to
9 comply in a nonsubstantial manner with the security requirements.

10 F. After the agent opens the proposals, the proposals are irrevocable
11 for the period specified in the request for proposals, except as provided in
12 section 34-603, subsection F OR SECTION 34-604, SUBSECTION F. If a proposer
13 is permitted to withdraw its proposal before award, no action may be had
14 against the proposer or the bid security.

15 G. All bonds given by a contractor and surety pursuant to this
16 section, regardless of their actual form, are deemed by law to be the form
17 required and set forth in this section.

18 Sec. 15. Section 34-610, Arizona Revised Statutes, as renumbered by
19 this act, is amended to read:

20 34-610. Construction-manager-at-risk, design-build and
21 job-order-contracting construction services surety
22 bond required; suit on bond; limitations

23 A. Except if specifically exempted by statute, before an agent
24 executes any contract with any person or firm for
25 construction-manager-at-risk construction services, design-build construction
26 services or job-order-contracting construction services, the person or firm
27 shall furnish to the agent entering into the contract the following bonds,
28 except that the bonds shall be furnished only on and at the same time as
29 execution of a contract or an amendment to a contract that commits the
30 contractor to provide construction for a fixed price, a guaranteed maximum
31 price or any other fixed amount within a designated time frame:

32 1. A performance bond in an amount equal to the full contract amount
33 conditioned on the faithful performance of the contract in accordance with
34 plans, specifications and conditions of the contract, except that:

35 (a) For job-order-contracting construction services, the performance
36 bond shall cover the full amount of construction under the
37 job-order-contracting construction services contract, shall not include any
38 design services, preconstruction services, finance services, maintenance
39 services, operations services or other related services included in the
40 contract, may be a single bond for the full term of the contract, a separate
41 bond for each year of a multiyear contract or a separate bond for each job
42 order, as determined by the agent, and, if a single bond for the full term of
43 the contract or a separate bond for each year of a multiyear contract, shall
44 initially be based on the agent's reasonable estimate of the amount of
45 construction that the agent believes is likely to actually be done during the

1 full term of the contract or during the particular year of a multiyear
2 contract, as applicable.

3 (b) For construction-manager-at-risk construction services and
4 design-build construction services, the amount of the performance bond shall
5 be the price of construction and shall not include the cost of any design
6 services, preconstruction services, finance services, maintenance services,
7 operations services or any other related services included in the contract.
8 The performance bond shall be solely for the protection of the public body
9 awarding the contract.

10 2. A payment bond in an amount equal to the full contract amount
11 solely for the protection of claimants supplying labor or materials to the
12 contractor or the contractor's subcontractors in the prosecution of the
13 construction and not for the protection of persons providing any design
14 services, preconstruction services, finance services, maintenance services,
15 operations services or other related services provided for in the contract,
16 except that:

17 (a) For job-order-contracting construction services, the payment bond
18 shall cover the full amount of construction under the job-order-contracting
19 construction services contract, shall not include any design services,
20 preconstruction services, finance services, maintenance services, operations
21 services or other related services included in the contract, may be a single
22 bond for the full term of the contract, a separate bond for each year of a
23 multiyear contract or a separate bond for each job order, as determined by
24 the agent, and, if a single bond for the full term of the contract or a
25 separate bond for each year of a multiyear contract, shall initially be based
26 on the agent's reasonable estimate of the amount of construction that the
27 agent believes is likely to actually be done during the full term of the
28 contract or during the particular year of a multiyear contract, as
29 applicable.

30 (b) For construction-manager-at-risk construction services and
31 design-build construction services, the amount of the payment bond shall be
32 the price of construction and shall not include the cost of any design
33 services, preconstruction services, finance services, maintenance services,
34 operations services or any other related services included in the contract.

35 B. Each bond shall include a provision allowing the prevailing party
36 in a suit on the bond to recover as a part of the judgment any reasonable
37 attorney fees as may be fixed by the court.

38 C. Notwithstanding any other statute, each bond shall be executed
39 solely by a surety company or companies holding a certificate of authority to
40 transact surety business in this state issued by the director of the
41 department of insurance pursuant to title 20, chapter 2, article 1. The
42 bonds shall not be executed by an individual surety or sureties, even if the
43 requirements of section 7-101 are satisfied. The bonds shall be payable to
44 the public body concerned.

1 D. The bonds shall be filed in the office of the department, board,
2 commission, institution, agency or other contracting body awarding the
3 contract.

4 E. It is illegal for a request for qualifications or a request for
5 proposals pursuant to section 34-603 OR 34-604, or any person acting or
6 purporting to act on behalf of the contracting body, to require that bonds be
7 furnished by a particular surety company, or through a particular agent or
8 broker.

9 F. The conditions and provisions in the payment bond regarding the
10 surety's obligations shall follow the following form:

11 Now, therefore, the condition of this obligation is that if the
12 principal promptly pays all monies due to all persons supplying
13 labor or materials to the principal or the principal's
14 subcontractors in the prosecution of the construction provided
15 for in the contract, this obligation is void. Otherwise it
16 remains in full force and effect. Provided, however, that this
17 bond is executed pursuant to title 34, chapter 6, Arizona
18 Revised Statutes, and all liabilities on this bond shall be
19 determined in accordance with the provisions, conditions and
20 limitations of title 34, chapter 6, Arizona Revised Statutes, to
21 the same extent as if they were copied at length in this
22 agreement. The prevailing party in a suit on this bond shall
23 recover as a part of the judgment reasonable attorney fees that
24 may be fixed by the court.

25 G. The conditions and provisions in the performance bond regarding the
26 surety's obligations shall follow the following form:

27 Now, therefore, the condition of this obligation is that if the
28 principal faithfully performs and fulfills all of the
29 undertakings, covenants, terms, conditions and agreements of the
30 contract during the original term of the contract and any
31 extension of the contract, with or without notice to the surety,
32 and during the life of any guaranty required under the contract,
33 and also performs and fulfills all of the undertakings,
34 covenants, terms, conditions and agreements of all duly
35 authorized modifications of the contract that may hereafter be
36 made, notice of which modifications to the surety being hereby
37 waived, the above obligation is void. Otherwise it remains in
38 full force and effect. Provided, however, that this bond is
39 executed pursuant to title 34, chapter 6, Arizona Revised
40 Statutes, and all liabilities on this bond shall be determined
41 in accordance with title 34, chapter 6, Arizona Revised
42 Statutes, to the extent as if it were copied at length in this
43 agreement. The prevailing party in a suit on this bond shall
44 recover as part of the judgment reasonable attorney fees that
45 may be fixed by the court. The performance under this bond is

1 limited to the construction to be performed under the contract
2 and does not include any design services, preconstruction
3 services, finance services, maintenance services, operations
4 services or any other related services included in the contract.

5 H. If the prime contract or specifications require any persons
6 supplying labor or materials in the prosecution of the work to furnish
7 payment or performance bonds, these bonds shall be executed solely by a
8 surety company or companies holding a certificate of authority to transact
9 surety business in this state issued by the director of the department of
10 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding any
11 other statute, the bonds shall not be executed by an individual surety or
12 sureties, even if the requirements of section 7-101 are satisfied.

13 I. All bonds given by a contractor and surety pursuant to this
14 section, regardless of their actual form, are deemed by law to be in the form
15 required and set forth in this section.

16 Sec. 16. Section 34-611, Arizona Revised Statutes, as renumbered by
17 this act, is amended to read:

18 34-611. Payment bonds for construction-manager-at-risk,
19 design-build and job-order-contracting construction
20 services

21 A. Every claimant who has furnished labor or material in the
22 prosecution of the construction provided for in a contract for
23 construction-manager-at-risk construction services, design-build construction
24 services and job-order-contracting construction services in respect of which
25 a payment bond is furnished under section ~~34-608~~ 34-610, and who has not been
26 paid in full before the expiration of ninety days after the day on which the
27 last of the labor was done or performed by the claimant or material was
28 furnished or supplied by the claimant for which the claim is made, shall have
29 the right to sue on the payment bond for the amount, or the balance, unpaid
30 at the time of institution of the suit and to prosecute the action to final
31 judgment for the sums justly due the claimant, and have execution thereon,
32 provided, however, that any claimant having a direct contractual
33 relationship with a subcontractor of the contractor furnishing the payment
34 bond but no contractual relationship express or implied with the contractor
35 shall have a right of action on the payment bond on giving the contractor
36 only a written preliminary twenty day notice, as provided for in section
37 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections E and H,
38 and on giving written notice to the contractor within ninety days from the
39 date on which the claimant performed the last of the labor or furnished or
40 supplied the last of the material for which the claim is made, stating with
41 substantial accuracy the amount claimed and the name of the party to whom the
42 material was furnished or supplied or for whom the labor was done or
43 performed. The notice shall be served by registered or certified mail,
44 postage prepaid, in an envelope addressed to the contractor at any place the

1 contractor maintains an office or conducts business, or at the contractor's
2 residence.

3 B. Every suit instituted under this section shall be brought in the
4 name of the claimant, but no suit may be commenced after the expiration of
5 one year from the date on which the last of the labor was performed or
6 materials were supplied by the person bringing this suit.

7 C. The contracting body and the agent in charge of its office shall
8 furnish to anyone making written application therefor and who states that it
9 has supplied labor or materials for work, and payment therefor has not been
10 made, or that it is being sued on any bond, or that it is the surety on the
11 bond, a certified copy of the bond and the contract for which it was given,
12 which copy is prima facie evidence of the contents, execution and delivery of
13 the original. Applicants shall pay for these certified copies such
14 reasonable fees as the contracting body or the agent in charge of its office
15 fixes to cover the actual cost of preparation of the copies.

16 Sec. 17. Section 41-2503, Arizona Revised Statutes, is amended to
17 read:

18 41-2503. Definitions

19 In this chapter, unless the context otherwise requires:

20 1. "Architect services" means those professional architect services
21 that are within the scope of architectural practice as provided in title 32,
22 chapter 1.

23 2. "Business" means any corporation, partnership, individual, sole
24 proprietorship, joint stock company, joint venture or other private legal
25 entity.

26 3. "Change order" means a written order which is signed by a
27 procurement officer and which directs the contractor to make changes that the
28 changes clause of the contract authorizes the procurement officer to order.

29 4. "Construction":

30 (a) Means the process of building, altering, repairing, improving or
31 demolishing any public structure or building or other public improvements of
32 any kind to any public real property.

33 (b) Does not include:

34 (i) The routine operation, routine repair or routine maintenance of
35 existing facilities, structures, buildings or real property.

36 (ii) The investigation, characterization, restoration or remediation
37 due to an environmental issue of existing facilities, structures, buildings
38 or real property.

39 5. "Construction-manager-at-risk" means a project delivery method in
40 which:

41 (a) There is a separate contract for design services and a separate
42 contract for construction services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT
43 FOR CONSTRUCTION SERVICES, THE PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS
44 FOR PRECONSTRUCTION SERVICES DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING
45 THE CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

1 (b) The contract for construction services may be entered into at the
2 same time as the contract for design services or at a later time.

3 (c) Design and construction of the project may be ~~in sequential phases~~
4 ~~or concurrent phases~~. EITHER:

5 (i) SEQUENTIAL WITH THE ENTIRE DESIGN COMPLETE BEFORE CONSTRUCTION
6 COMMENCES.

7 (ii) CONCURRENT WITH THE DESIGN PRODUCED IN TWO OR MORE PHASES AND
8 CONSTRUCTION OF SOME PHASES COMMENCING BEFORE THE ENTIRE DESIGN IS COMPLETE.

9 (d) Finance services, maintenance services, operations services,
10 preconstruction services and other related services may be included.

11 6. "Construction services" means either of the following for
12 construction-manager-at-risk, design-build and job-order-contracting project
13 delivery methods:

14 (a) Construction, excluding services, through the
15 construction-manager-at-risk or job-order-contracting project delivery
16 methods.

17 (b) A combination of construction and, as elected by the purchasing
18 agency, one or more related services, such as finance services, maintenance
19 services, operations services, design services and preconstruction services,
20 as those services are authorized in the definitions of
21 construction-manager-at-risk, design-build or job-order-contracting in this
22 section.

23 7. "Contract" means all types of state agreements, regardless of what
24 they may be called, for the procurement of materials, services, or
25 construction, CONSTRUCTION SERVICES or the disposal of materials.

26 8. "Contract modification" means any written alteration in the terms
27 and conditions of any contract accomplished by mutual action of the parties
28 to the contract.

29 9. "Contractor" means any person who has a contract with a state
30 governmental unit.

31 10. "Data" means documented information, regardless of form or
32 characteristic.

33 11. "Department" means the department of administration.

34 12. "Design-bid-build" means a project delivery method in which:

35 (a) There is a sequential award of two separate contracts.

36 (b) The first contract is for design services.

37 (c) The second contract is for construction.

38 (d) Design and construction of the project are in sequential phases.

39 (e) Finance services, maintenance services and operations services are
40 not included.

41 13. "Design-build" means a project delivery method in which:

42 (a) There is a single contract for design services and construction
43 services, EXCEPT THAT INSTEAD OF A SINGLE CONTRACT FOR DESIGN SERVICES AND
44 CONSTRUCTION SERVICES, THE PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS FOR
45 PRECONSTRUCTION SERVICES AND DESIGN SERVICES DURING THE DESIGN PHASE, FOR

1 CONSTRUCTION AND DESIGN SERVICES DURING THE CONSTRUCTION PHASE AND FOR ANY
2 OTHER CONSTRUCTION SERVICES.

3 (b) Design and construction of the project may be ~~in sequential phases~~
4 ~~or concurrent phases~~. EITHER:

5 (i) SEQUENTIAL WITH THE ENTIRE DESIGN COMPLETE BEFORE CONSTRUCTION
6 COMMENCES.

7 (ii) CONCURRENT WITH THE DESIGN PRODUCED IN TWO OR MORE PHASES AND
8 CONSTRUCTION OF SOME PHASES COMMENCING BEFORE THE ENTIRE DESIGN IS COMPLETE.

9 (c) Finance services, maintenance services, operations services,
10 preconstruction services and other related services may be included.

11 14. "Design requirements":

12 (a) Means at a minimum the purchasing agency's written description of
13 the project or service to be procured, including:

14 (i) The required features, functions, characteristics, qualities and
15 properties.

16 (ii) The anticipated schedule, including start, duration and
17 completion.

18 (iii) The estimated budgets applicable to the specific procurement for
19 design and construction and, if applicable, for operation and maintenance.

20 (b) May include:

21 (i) Drawings and other documents illustrating the scale and
22 relationship of the features, functions and characteristics of the project,
23 which shall all be prepared by an architect or engineer, as appropriate, who
24 is registered pursuant to section 32-121.

25 (ii) Additional design information or documents that the purchasing
26 agency elects to include.

27 15. "Design services" means architect services, engineer services or
28 landscape architect services.

29 16. "Designee" means a duly authorized representative of the director.

30 17. "Director" means the director of the department of administration.

31 18. "Employee" means an individual drawing a salary from a state
32 governmental unit, whether elected or not, and any noncompensated individual
33 performing personal services for any state governmental unit.

34 19. "Engineer services" means those professional engineer services that
35 are within the scope of engineering practice as provided in title 32,
36 chapter 1.

37 20. "Finance services" means financing for a construction services
38 project.

39 21. "General services administration contract" means contracts awarded
40 by the United States government general services administration.

41 22. "Grant" means the furnishing of financial or other assistance,
42 including state funds or federal grant funds, by any state governmental unit
43 to any person for the purpose of supporting or stimulating educational,
44 cultural, social or economic quality of life.

45 23. "Job-order-contracting" means a project delivery method in which:

1 (a) The contract is a requirements contract for indefinite quantities
2 of construction.

3 (b) The construction to be performed is specified in job orders issued
4 during the contract.

5 (c) Finance services, maintenance services, operations services,
6 preconstruction services, design services and other related services may be
7 included.

8 24. "Landscape architect services" means those professional landscape
9 architect services that are within the scope of landscape architectural
10 practice as provided in title 32, chapter 1.

11 25. "Maintenance services" means routine maintenance, repair and
12 replacement of existing facilities, structures, buildings or real property.

13 26. "Materials":

14 (a) Means all property, including equipment, supplies, printing,
15 insurance and leases of property.

16 (b) Does not include land, a permanent interest in land or real
17 property or leasing space.

18 27. "Operations services" means routine operation of existing
19 facilities, structures, buildings or real property.

20 28. "Owner" means a state purchasing agency or state governmental unit.

21 29. "Person" means any corporation, business, individual, union,
22 committee, club, other organization or group of individuals.

23 30. "Preconstruction services" means ~~advice~~ SERVICES AND OTHER
24 ACTIVITIES during the design phase.

25 31. "Procurement":

26 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
27 any materials, services, construction or construction services.

28 (b) Includes all functions that pertain to obtaining any ~~material~~
29 MATERIALS, services, construction or construction services, including
30 description of requirements, selection and solicitation of sources,
31 preparation and award of contract, and all phases of contract administration.

32 32. "Procurement officer":

33 (a) Means any person duly authorized to enter into and administer
34 contracts and make written determinations with respect to the contracts.

35 (b) Includes an authorized representative acting within the limits of
36 the authorized representative's authority.

37 33. "Purchasing agency" means any state governmental unit which is
38 authorized by this chapter or rules adopted pursuant to this chapter, or by
39 way of delegation from the director, to enter into contracts.

40 34. "Services":

41 (a) Means the furnishing of labor, time or effort by a contractor or
42 subcontractor which does not involve the delivery of a specific end product
43 other than required reports and performance.

44 (b) Does not include employment agreements or collective bargaining
45 agreements.

1 ~~35. "Specific single project" means one or more facilities at a single~~
2 ~~location, at a common location or, if for a similar purpose, at multiple~~
3 ~~locations.~~

4 ~~36.~~ 35. "State governmental unit" means any department, commission,
5 council, board, bureau, committee, institution, agency, government
6 corporation or other establishment or official of the executive branch or
7 corporation commission of this state.

8 ~~37.~~ 36. "Subcontractor" means a person who contracts to perform work
9 or render service to a contractor or to another subcontractor as a part of a
10 contract with a state governmental unit.

11 ~~38.~~ 37. "Using agency" means any state governmental unit which
12 utilizes any materials, services or construction procured under this chapter.

13 Sec. 18. Section 41-2532, Arizona Revised Statutes, is amended to
14 read:

15 41-2532. Methods of source selection

16 Unless otherwise authorized by law, all state contracts shall be
17 awarded by competitive sealed bidding as provided in section 41-2533, except
18 as provided in sections 41-2534 through 41-2538 and sections 41-2553,
19 41-2554, 41-2558, 41-2559, 41-2572, 41-2578, 41-2579, 41-2581 and 41-2636.

20 Sec. 19. Section 41-2533, Arizona Revised Statutes, is amended to
21 read:

22 41-2533. Competitive sealed bidding

23 A. Contracts shall be awarded by competitive sealed bidding except as
24 otherwise provided in section 41-2532.

25 B. An invitation for bids shall be issued and shall include a purchase
26 description and all contractual terms and conditions applicable to the
27 procurement.

28 C. Adequate public notice of the invitation for bids shall be given a
29 reasonable time before the date set forth in the invitation for the opening
30 of bids, in accordance with rules adopted by the director. The notice may
31 include publication one or more times in a newspaper of general circulation a
32 reasonable time before bid opening. If the invitation for bids is for the
33 procurement of services other than those described in sections 41-2513, and
34 41-2578, 41-2579 AND 41-2581, the notice shall include publication in a
35 single newspaper or in multiple newspapers within this state. The
36 publication shall be not less than two weeks before bid opening and shall be
37 circulated within the affected governmental jurisdiction. The notice may
38 also be posted at a designated site on a worldwide public network of
39 interconnected computers.

40 D. Bids shall be opened publicly at the time and place designated in
41 the invitation for bids. The amount of each bid, and such other relevant
42 information as may be specified by rule, together with the name of each
43 bidder shall be recorded. This record shall be open to public inspection at
44 the bid opening in a manner prescribed by rule. The bids shall not be open
45 for public inspection until after a contract is awarded. To the extent the

1 bidder designates and the state concurs, trade secrets or other proprietary
2 data contained in the bid documents shall remain confidential in accordance
3 with rules adopted by the director.

4 E. Bids shall be unconditionally accepted without alteration or
5 correction, except as authorized in this chapter. Bids shall be evaluated
6 based on the requirements set forth in the invitation for bids, including
7 criteria to determine acceptability such as inspection, testing, quality,
8 workmanship, delivery and suitability for a particular purpose, as prescribed
9 in rules adopted by the director. The invitation for bids shall set forth
10 the evaluation criteria to be used, including the weighting of identified
11 criteria. Evaluation criteria shall not be used for construction and no
12 criteria may be used in bid evaluation that are not set forth in the
13 invitation for bids.

14 F. The correction or withdrawal of erroneous bids before or after bid
15 opening, based on bid mistakes, may be permitted in accordance with rules
16 adopted by the director. After bid opening, no corrections in bid prices or
17 other provisions of bids prejudicial to the interest of this state or fair
18 competition shall be permitted. Except as otherwise provided by rule, all
19 decisions to permit the correction or withdrawal of bids, or to cancel awards
20 or contracts based on bid mistakes, shall be supported by a written
21 determination made by the director.

22 G. The contract shall be awarded to the lowest responsible and
23 responsive bidder whose bid conforms in all material respects to the
24 requirements and criteria set forth in the invitation for bids. The amount
25 of any applicable transaction privilege or use tax of a political subdivision
26 of this state is not a factor in determining the lowest bidder. If all bids
27 for a construction project exceed available monies as certified by the
28 appropriate fiscal officer, and the low responsive and responsible bid does
29 not exceed such monies by more than five per cent, the director may in
30 situations in which time or economic considerations preclude resolicitation
31 of work of a reduced scope negotiate an adjustment of the bid price,
32 including changes in the bid requirements, with the low responsive and
33 responsible bidder, to bring the bid within the amount of available monies.

34 H. The multistep sealed bidding method may be used if the director
35 determines in writing that it is not ~~practical~~ PRACTICABLE to initially
36 prepare a definitive purchase description which is suitable to permit an
37 award based on competitive sealed bidding. An invitation for bids may be
38 issued requesting the submission of technical offers to be followed by an
39 invitation for bids limited to those bidders whose offers are determined to
40 be technically acceptable under the criteria set forth in the first
41 solicitation, except that the multistep sealed bidding method may not be used
42 for construction contracts.

43 I. If the price of a recycled paper product which conforms to
44 specifications is within five per cent of a low bid product which is not
45 recycled and the recycled product bidder is otherwise the lowest responsible

1 and responsive bidder, the award shall be made to the bidder offering the
2 recycled product. The director may adopt rules requiring a five per cent
3 preference for other products made from recycled materials.

4 Sec. 20. Section 41-2534, Arizona Revised Statutes, is amended to
5 read:

6 41-2534. Competitive sealed proposals

7 A. If, under rules adopted pursuant to this chapter, the director
8 determines in writing that the use of competitive sealed bidding is either
9 not practicable or not advantageous to this state, a contract for materials
10 or services may be entered into by competitive sealed proposals. This
11 section does not apply to procurement of construction, construction services
12 or specified professional services pursuant to section 41-2537, 41-2578,
13 ~~subsection A~~ 41-2579 OR 41-2581. Construction services shall be procured
14 pursuant to section 41-2537, or 41-2578 OR 41-2579. The director may provide
15 by rule that it is either not practicable or not advantageous to this state
16 to procure specified types of materials or services by competitive sealed
17 bidding.

18 B. Proposals shall be solicited through a request for proposals.

19 C. Adequate public notice of the request for proposals shall be given
20 in the same manner as provided in section 41-2533.

21 D. Proposals shall be opened publicly at the time and place designated
22 in the request for proposals. The name of each offeror and such other
23 relevant information as is specified by rule shall be publicly read and
24 recorded in accordance with rules adopted by the director. All other
25 information contained in the proposals shall be confidential so as to avoid
26 disclosure of contents prejudicial to competing offerors during the process
27 of negotiation. The proposals shall be open for public inspection after
28 contract award. To the extent the offeror designates and the state concurs,
29 trade secrets or other proprietary data contained in the offer documents
30 shall remain confidential in accordance with rules adopted by the director.

31 E. The request for proposals shall state the relative importance of
32 price and other evaluation factors. Specific numerical weighting is not
33 required.

34 F. As provided in the request for proposals, and under rules adopted
35 by the director, discussions may be conducted with responsible offerors who
36 submit proposals determined to be reasonably susceptible to being selected
37 for award for the purpose of clarification to ~~assure~~ ENSURE full
38 understanding of the solicitation requirements and to permit revision of
39 offers. Offerors shall be accorded fair treatment with respect to any
40 opportunity for discussion. Revisions may be permitted after submission and
41 before award. If discussions are conducted, all offerors who have submitted
42 proposals that are determined by the procurement officer to be in the
43 competitive range shall be invited to submit a final proposal revision. In
44 conducting discussions, there shall be no disclosure of any information
45 derived from proposals submitted by competing offerors.

1 G. The award shall be made to the responsible offeror whose proposal is
2 determined in writing to be the most advantageous to this state taking into
3 consideration the evaluation factors set forth in the request for proposals.
4 No other factors or criteria may be used in the evaluation. The amount of
5 any applicable transaction privilege or use tax of a political subdivision of
6 this state is not a factor in determining the most advantageous proposal.
7 The contract file shall contain the basis on which the award is made.

8 Sec. 21. Section 41-2537, Arizona Revised Statutes, is amended to
9 read:

10 41-2537. Emergency procurements

11 Notwithstanding any other provision of this chapter, the director may
12 make or authorize others to make emergency procurements if there exists a
13 threat to public health, welfare, or safety or if a situation exists which
14 makes compliance with section 41-2533, 41-2534, or 41-2578, 41-2579 OR
15 41-2581 impracticable, unnecessary or contrary to the public interest as
16 defined in rules adopted by the director, except that such emergency
17 procurements shall be made with such competition as is practicable under the
18 circumstances. A written determination of the basis for the emergency and
19 for the selection of the particular contractor shall be included in the
20 contract file.

21 Sec. 22. Section 41-2573, Arizona Revised Statutes, is amended to
22 read:

23 41-2573. Bid security

24 A. As a guarantee that the contractor will enter into a contract, bid
25 security is required for all construction procured pursuant to section
26 41-2533 and all construction services procured pursuant to section 41-2578,
27 subsection F OR SECTION 41-2579, SUBSECTION F if the purchasing agency
28 estimates that the budget for construction, excluding the cost of any finance
29 services, maintenance services, operations services, design services,
30 preconstruction services or other related services included in the contract,
31 will be more than the amount established by section 41-2535, subsection D.
32 Bid security shall be a certified check, cashier's check or surety bond.

33 B. Bid security shall be submitted in the following amounts:

34 1. For design-bid-build construction services, ten per cent of the
35 contractor's bid.

36 2. For design-build construction services awarded by competitive
37 sealed proposals pursuant to section 41-2578, subsection F, ten per cent of
38 the purchasing agency's construction budget for the project as stated in the
39 request for proposals, excluding finance services, maintenance services,
40 operations services, design services, preconstruction services or any other
41 related services included in the contract.

42 3. For job-order-contracting construction services awarded by
43 competitive sealed proposals pursuant to section 41-2578, subsection F OR
44 SECTION 41-2579, SUBSECTION F, the amount prescribed by the purchasing agency
45 in the request for proposals, but not more than ten per cent of the

1 purchasing agency's reasonably estimated budget for construction that the
2 purchasing agency believes is likely to actually be done during the first
3 year under the contract, excluding any finance services, maintenance
4 services, operations services, design services, preconstruction services or
5 other related services included in the contract.

6 C. Nothing in this section prevents a state governmental unit from
7 requiring such bid security in relation to any construction contract. The
8 surety bond shall be executed and furnished as required by title 34, chapter
9 2 or chapter 6, as applicable, and the conditions and provisions of the
10 surety bond regarding the surety's obligations shall follow the form required
11 by section 34-201 or ~~34-606~~ 34-608, as applicable.

12 D. If the invitation for bids or request for proposals requires
13 security, noncompliance requires that the bid be rejected unless, pursuant to
14 rules, it is determined that the bid fails to comply in a nonsubstantial
15 manner with the security requirements.

16 E. After the bids or proposals are opened, they are irrevocable for
17 the period specified in the invitation for bids or request for proposals,
18 except as provided in section 41-2533, subsection F, and section 41-2578,
19 subsection F AND SECTION 41-2579, SUBSECTION F. If a bidder is permitted to
20 withdraw its bid before award, no action may be had against the bidder or the
21 bid security.

22 Sec. 23. Section 41-2574, Arizona Revised Statutes, is amended to
23 read:

24 41-2574. Contract performance and payment bonds

25 A. The following bonds or security is required and is binding on the
26 parties to the contract if the value of a construction award exceeds the
27 amount established by section 41-2535:

28 1. A performance bond that is executed and furnished as required under
29 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
30 equal to one hundred per cent of the price specified in the contract
31 conditioned on the faithful performance of the contract in accordance with
32 the plans, specifications and conditions of the contract, except that:

33 (a) For job-order-contracting construction services, the performance
34 bond shall cover the full amount of construction under the
35 job-order-contracting construction services contract, shall not include any
36 design services, preconstruction services, finance services, maintenance
37 services, operations services or other related services included in the
38 contract, may be a single bond for the full term of the contract, a separate
39 bond for each year of a multiyear contract or a separate bond for each job
40 order, as determined by the purchasing agency, and, if a single bond for the
41 full term of the contract or a separate bond for each year of a multiyear
42 contract, shall initially be based on the purchasing agency's reasonable
43 estimate of the amount of construction that the purchasing agency believes is
44 likely to actually be done during the full term of the contract or during the
45 particular year of a multiyear contract, as applicable.

1 (b) For construction-manager-at-risk construction services and
2 design-build construction services, the amount of the performance bond shall
3 be the price of construction and shall not include the cost of any design
4 services, preconstruction services, finance services, maintenance services,
5 operations services and other related services included in the contract.
6 This bond is solely for the protection of this state. The conditions and
7 provisions of the performance bond regarding the surety's obligations shall
8 follow the form required under section 34-222, subsection G or section ~~34-608~~
9 34-610, subsection G, as applicable.

10 2. A payment bond that is executed and furnished as required by title
11 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
12 one hundred per cent of the price specified in the contract for the
13 protection of all persons supplying labor or material to the contractor or
14 its subcontractors for the performance of the construction provided for in
15 the contract, except that:

16 (a) For job-order-contracting construction services, the payment bond
17 shall cover the full amount of construction under the job-order-contracting
18 construction services contract, shall not include any design services,
19 preconstruction services, finance services, maintenance services, operations
20 services or other related services included in the contract, may be a single
21 bond for the full term of the contract, a separate bond for each year of a
22 multiyear contract or a separate bond for each job order, as determined by
23 the purchasing agency, and, if a single bond for the full term of the
24 contract or a separate bond for each year of a multiyear contract, shall
25 initially be based on the purchasing agency's reasonable estimate of the
26 amount of construction that the purchasing agency believes is likely to
27 actually be done during the full term of the contract or during the
28 particular year of a multiyear contract, as applicable.

29 (b) For construction-manager-at-risk construction services and
30 design-build construction services, the amount of the payment bond shall be
31 the price of construction and shall not include the cost of any design
32 services, preconstruction services, finance services, maintenance services,
33 operations services or other related services included in the contract. The
34 conditions and provisions of the payment bond regarding the surety's
35 obligations shall follow the form required under section 34-222, subsection F
36 or section ~~34-608~~ 34-610, subsection F, as applicable.

37 B. For design-bid-build construction, the bonds prescribed in
38 subsection A of this section shall be provided on and at the same time as
39 execution of the construction contract. For construction-manager-at-risk,
40 design-build and job-order-contracting construction services, the bonds
41 prescribed in subsection A of this section shall be provided only on and at
42 the same time as execution of a contract or an amendment to a contract that
43 commits the contractor to provide construction for a fixed price, guaranteed
44 maximum price or other fixed amount within a designated time frame.

1 C. If the prime contract or specifications require any persons
2 supplying labor or materials in the prosecution of the work to furnish
3 payment or performance bonds, these bonds shall be executed solely by a
4 surety company or companies holding a certificate of authority to transact
5 surety business in this state issued by the director of the department of
6 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
7 provisions of any other statute, the bonds shall not be executed by an
8 individual surety or sureties, even if the requirements of section 7-101 are
9 satisfied.

10 Sec. 24. Section 41-2578, Arizona Revised Statutes, is amended to
11 read:

12 41-2578. Procurement of specified professional and construction
13 services; definition

14 A. EXCEPT AS AUTHORIZED BY SECTIONS 41-2535, 41-2536, 41-2537 AND
15 41-2581, A SINGLE CONTRACT FOR architect services, assayer services,
16 construction-manager-at-risk construction services, design-build construction
17 services, engineer services, job-order-contracting construction services,
18 geologist services, landscape architect services and land surveying services
19 shall be procured as provided in this section ~~except as authorized by~~
20 ~~sections 41-2535, 41-2536 and 41-2537.~~

21 B. This state shall provide notice, in accordance with rules, of each
22 procurement of A SINGLE CONTRACT FOR professional services or construction
23 services specified in this section and shall award ~~contracts~~ THE SINGLE
24 CONTRACT on the basis of demonstrated competence and qualifications for the
25 type of professional services or construction services pursuant to procedures
26 prescribed in this section.

27 C. In the procurement of these A SINGLE CONTRACT FOR professional
28 services or construction services pursuant to this section:

29 ~~1. For procurement of professional services if the contract is for~~
30 ~~professional services by an architect or architect firm and the contract~~
31 ~~amount is two hundred fifty thousand dollars or less or is for professional~~
32 ~~services by a person or firm other than an architect and the contract amount~~
33 ~~is five hundred thousand dollars or less, the director shall encourage~~
34 ~~persons or firms engaged in the lawful practice of the profession to submit~~
35 ~~annually a statement of qualifications and experience. The director or the~~
36 ~~head of the purchasing agency shall initiate an appropriately qualified~~
37 ~~selection committee for each procurement, which may include one or more~~
38 ~~contracts, in accordance with rules adopted by the director or purchasing~~
39 ~~agency. The selection committee shall evaluate current statements of~~
40 ~~qualifications and experience on file with the director or purchasing agency,~~
41 ~~together with those that may be submitted by other persons or firms regarding~~
42 ~~the procurement. If possible, the selection committee shall conduct~~
43 ~~interviews with at least three persons or firms regarding the procurement and~~
44 ~~the relative methods of furnishing the required services and, if possible,~~
45 ~~shall select, in order of preference and based on criteria established and~~

published by the selection committee, a separate final list for each contract being procured of at least three of the persons or firms deemed to be the most qualified to provide the services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only. The purchasing agency and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this paragraph, including the selection of the persons or firms to be interviewed, the selection of the persons and firms to be on a final list, in determining the order of preference of persons and firms on a final list or for any other purpose in the selection process. For each contract for professional services included in the procurement, the procurement officer shall enter into separate negotiations for the contract with the highest qualified person or firm on the final list for the contract. The negotiations shall include consideration of compensation and other contract terms that the procurement officer determines to be fair and reasonable to this state. In making this determination, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. If the procurement officer is unable to negotiate a satisfactory contract with the highest qualified person or firm on the final list for the contract at a price and on other contract terms the procurement officer determines to be fair and reasonable to this state, the procurement officer shall formally terminate negotiations with that person or firm. The procurement officer may undertake negotiations with the next most qualified person or firm on the final list for the contract in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list for the contract.

2. For professional services if the contract amount is more than two hundred fifty thousand dollars for professional services by an architect or architect firm or five hundred thousand dollars for professional services by a person or firm other than an architect and for all construction services, the purchasing agency shall follow the procedure prescribed in this paragraph and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection. Notwithstanding paragraph 1 of this subsection, for professional services otherwise subject to paragraph 1 of this subsection, the purchasing agency may elect to follow the procedures prescribed in this paragraph and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection.

1. THE FOLLOWING REQUIREMENTS APPLY:

(a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

1 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
2 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
3 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
4 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
5 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
6 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
7 ACTIONS.

8 (c) A PURCHASING AGENCY IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT
9 UNDER THIS SECTION. ALTERNATIVELY:

10 (i) FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, A
11 PURCHASING AGENCY MAY ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES
12 DURING THE DESIGN PHASE, FOR CONSTRUCTION DURING THE CONSTRUCTION PHASE AND
13 FOR ANY OTHER CONSTRUCTION SERVICES.

14 (ii) FOR DESIGN-BUILD CONSTRUCTION SERVICES, A PURCHASING AGENCY MAY
15 ELECT SEPARATE CONTRACTS FOR PRECONSTRUCTION SERVICES AND DESIGN SERVICES
16 DURING THE DESIGN PHASE, FOR CONSTRUCTION AND DESIGN SERVICES DURING THE
17 CONSTRUCTION PHASE AND FOR ANY OTHER CONSTRUCTION SERVICES.

18 (iii) FOR PROFESSIONAL SERVICES, A PURCHASING AGENCY MAY ENTER INTO
19 MULTIPLE CONTRACTS FOR DIFFERENT PHASES OF A SINGLE PROJECT.

20 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
21 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
22 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
23 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
24 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
25 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
26 AT MULTIPLE LOCATIONS:

27 (i) AT THE TIME THE REQUEST FOR QUALIFICATIONS IS ISSUED, THE
28 PURCHASING AGENCY MUST INTEND TO COMMENCE ALL CONSTRUCTION AT EACH LOCATION
29 WITHIN THIRTY MONTHS AFTER EXECUTION OF THE FIRST CONTRACT FOR
30 PRECONSTRUCTION SERVICES OR OTHER CONSTRUCTION SERVICES AT ANY OF THE
31 LOCATIONS.

32 (ii) THE REQUEST FOR QUALIFICATIONS MUST INCLUDE THE INFORMATION
33 DESCRIBED IN PARAGRAPH 2, SUBDIVISION (g) OF THIS SUBSECTION.

34 (e) IF THE PURCHASING AGENCY ENTERS INTO THE FIRST CONTRACT FOR
35 PRECONSTRUCTION SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS
36 THE RESULT OF THE PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS.
37 AFTER EXECUTION OF THAT FIRST CONTRACT THE PURCHASING AGENCY MAY NOT USE THE
38 PROCUREMENT OR THE EXISTING FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR
39 ENTERING INTO A CONTRACT WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN
40 THE PROCUREMENT.

41 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
42 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
43 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

44 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
45 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT

1 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
2 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
3 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
4 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
5 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
6 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

7 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
8 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
9 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
10 TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT
11 OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM
12 REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT TO PROCEED WITH THE
13 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR DETERMINES IN
14 WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS
15 FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD
16 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
17 RESOLICITATION.

18 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
19 FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE
20 BEST INTEREST OF THE STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON
21 OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
22 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
23 COMMITTEE AS THE NEXT MOST QUALIFIED.

24 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
25 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
26 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
27 REQUEST FOR QUALIFICATIONS SHALL:

28 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED, DESCRIBE THE
29 SERVICES TO BE PERFORMED UNDER THE CONTRACT AND STATE THAT ONE PERSON OR FIRM
30 MAY OR WILL BE AWARDED THE CONTRACT.

31 (b) IN A PROCUREMENT OF A CONTRACT TO BE NEGOTIATED UNDER SUBSECTION E
32 OF THIS SECTION, STATE THAT THERE WILL BE A SINGLE FINAL LIST OF AT LEAST
33 THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS. IN A PROCUREMENT IN WHICH THE
34 CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS SECTION, STATE THAT THERE
35 WILL BE A SINGLE FINAL LIST AND THAT THE NUMBER OF PERSONS OR FIRMS ON THE
36 FINAL LIST WILL BE THREE.

37 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
38 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
39 EXCEPT THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
40 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
41 THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN. ALL SELECTION CRITERIA
42 UNDER THIS SUBSECTION SHALL BE FACTORS THAT DEMONSTRATE COMPETENCE AND
43 QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES
44 INCLUDED IN THE PROCUREMENT. IF:

1 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
2 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
3 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
4 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
5 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
6 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
7 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
8 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
9 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE WHETHER THE
10 PURCHASING AGENCY WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
11 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
12 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
13 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
14 RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR QUALIFICATIONS.

15 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
16 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
17 BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND IN
18 DETERMINING THEIR ORDER ON THE FINAL LIST.

19 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
20 SELECTION PROCESS, STATE THAT INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS
21 WILL BE WITH AT LEAST THREE AND NO MORE THAN FIVE PERSONS OR FIRMS.

22 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

23 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
24 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
25 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
26 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
27 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

28 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
29 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
30 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
31 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
32 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST
33 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
34 PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

35 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
36 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
37 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE
38 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
39 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

40 (g) IN A PROCUREMENT OF CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
41 SERVICES OR DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED AT MULTIPLE
42 LOCATIONS, INCLUDE:

43 (i) A BRIEF DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED
44 AT EACH LOCATION.

1 (ii) THE ESTIMATED BUDGET FOR THE CONSTRUCTION SERVICES TO BE
2 PERFORMED AT EACH LOCATION.

3 (iii) A SCHEDULE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
4 LOCATION THAT SHOWS THE PURCHASING AGENCY'S INTENT TO COMMENCE ALL
5 CONSTRUCTION AT EACH LOCATION WITHIN THIRTY MONTHS AFTER EXECUTION OF THE
6 FIRST CONTRACT FOR PRECONSTRUCTION SERVICES OR OTHER CONSTRUCTION SERVICES AT
7 ANY OF THE LOCATIONS.

8 3. The director or head of a purchasing agency shall initiate an
9 appropriately qualified selection committee for each request for
10 qualifications in accordance with rules adopted by the director. THE
11 DIRECTOR OR HEAD OF A PURCHASING AGENCY SHALL ENSURE THAT THE SELECTION
12 COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION COMMITTEE. EACH
13 SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE PURCHASING AGENCY OR A
14 PURCHASING AGENCY REPRESENTATIVE APPOINTED BY THE PURCHASING AGENCY. If
15 procuring professional services, the purchasing agency shall determine the
16 number and qualifications of the selection committee members. A selection
17 committee for the procurement of construction services shall not have more
18 than seven members and shall include at least one person who is a senior
19 management employee of a licensed contractor and one person who is an
20 architect or an engineer who is registered pursuant to section 32-121. These
21 members may be employees of the purchasing agency or outside consultants.
22 Outside contractors, architects and engineers serving on a selection
23 committee shall not receive compensation from the purchasing agency for
24 performing this service, but the purchasing agency may elect to reimburse
25 outside contractors, architects and engineers for travel, lodging and other
26 expenses incurred in connection with service on a selection committee. A
27 person who is a member of a selection committee shall not be a contractor
28 under a contract awarded under the procurement or provide ANY PROFESSIONAL
29 SERVICES, construction, construction services, materials or OTHER services
30 under the contract. The selection committee AND THE PURCHASING AGENCY shall
31 DO THE FOLLOWING:

32 (a) ~~Evaluate~~ IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR
33 QUALIFICATIONS:

34 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSON OR FIRMS TO BE
35 INTERVIEWED BY EVALUATING the statements of qualifications and performance
36 data that are submitted in response to the purchasing agency's request for
37 qualifications BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
38 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
39 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

40 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
41 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
42 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
43 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
44 THE PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE
45 INTERVIEWED THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION

1 CRITERIA TO BE USED TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO
2 DETERMINE THEIR ORDER ON THE FINAL LIST. THESE SELECTION CRITERIA AND
3 RELATIVE WEIGHT MAY BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE
4 WEIGHT USED TO DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

5 ~~(b) If determined by the purchasing agency and included by the~~
6 ~~purchasing agency in the request for qualifications,~~

7 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with at least
8 three but not more than five persons or firms as specified in the request for
9 qualifications regarding the professional services or construction services
10 and the relative methods of approach for furnishing the required professional
11 services or construction services. ~~, except that if multiple contracts are~~
12 ~~being procured under a single request for qualifications, the number to be~~
13 ~~interviewed shall be at least three and not more than the number of contracts~~
14 ~~plus two.~~

15 ~~(c) After any interviews, in order of preference, based on the~~
16 ~~criteria and the weighting of the criteria included in the request for~~
17 ~~qualifications, select a final list for each contract of three of the persons~~
18 ~~or firms the selection committee deems to be the most qualified to provide~~
19 ~~the professional services or construction services.~~

20 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
21 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
22 THE PERSONS OR FIRMS ON THE FINAL LIST AND THEIR ORDER ON THE FINAL LIST, THE
23 SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST and,
24 in the case of A FINAL LIST FOR a contract that will be negotiated under
25 subsection E of this section, rank the three persons or firms on the final
26 list in order of preference. ~~The selection committee shall base the~~
27 ~~selection of the final list and the order of preference on demonstrated~~
28 ~~competence and qualifications only. If the request for qualifications~~
29 ~~solicited multiple contracts, the selection committee shall select a separate~~
30 ~~final list for each contract, except that if multiple contracts are being~~
31 ~~procured and if the request for qualifications specified that all of the~~
32 ~~multiple contracts will be awarded to a single contractor, the selection~~
33 ~~committee may select a single final list for all of the multiple contracts.~~
34 ~~If only two responsible and responsive persons or firms respond to the~~
35 ~~request for qualifications or if persons or firms withdraw from the~~
36 ~~procurement process so that there are only two responsible and responsive~~
37 ~~persons or firms remaining in the procurement process, the purchasing agency~~
38 ~~may elect to have the selection committee proceed with the procurement,~~
39 ~~including interviews and the final list, with those two persons or firms or~~
40 ~~the purchasing agency may readvertise pursuant to this subsection as the~~
41 ~~purchasing agency deems necessary or appropriate. If only one responsive and~~
42 ~~responsible person or firm responds to the request for qualifications or if~~
43 ~~persons or firms withdraw from the procurement process for a contract or~~
44 ~~multiple contracts to be negotiated under subsection E of this section so~~
45 ~~that only one responsive and responsible person or firm remains in the~~

1 ~~procurement process, the purchasing agency may elect to proceed with only one~~
2 ~~person or firm in the procurement process and may award the contract or~~
3 ~~contracts to a single person or firm if the purchasing agency determines in~~
4 ~~writing that the fee negotiated pursuant to subsection E of this section is~~
5 ~~fair and reasonable and either other prospective persons or firms had a~~
6 ~~reasonable opportunity to respond or there is not adequate time for a~~
7 ~~resolicitation. If a person or firm on the final list withdraws or is~~
8 ~~removed from the procurement process and the selection committee determines~~
9 ~~that it is in the best interest of the purchasing agency, the selection~~
10 ~~committee may replace that person or firm with another person or firm that~~
11 ~~submitted qualifications and that is selected by the selection committee as~~
12 ~~the next most qualified.~~

13 ~~(d) Base the selection of the final list and order of preference on~~
14 ~~the final list on demonstrated competence and qualifications only.~~

15 ~~3. The purchasing agency shall issue a request for qualifications for~~
16 ~~each contract and give adequate public notice of the request for~~
17 ~~qualifications in the same manner as provided in section 41-2533. The~~
18 ~~request for qualifications shall state:~~

19 ~~(a) The criteria to be used by the selection committee to select the~~
20 ~~person or firm to perform the professional services or the construction~~
21 ~~services. The request for qualifications shall also state in a manner~~
22 ~~determined by the purchasing agency the relative weight of the selection~~
23 ~~criteria and, if required under paragraph 8, subdivision (b) of this~~
24 ~~subsection, that one of the criteria will be the person's or firm's~~
25 ~~subcontractor selection plan or procedures to implement the purchasing~~
26 ~~agency's subcontractor selection plan.~~

27 ~~(b) If the purchasing agency will hold interviews as part of the~~
28 ~~selection process, that interviews shall be held with at least three and no~~
29 ~~more than five persons or firms, except that if multiple contracts are being~~
30 ~~procured under a single request for qualifications solicitation under this~~
31 ~~subsection or a single request for qualifications and request for proposals~~
32 ~~solicitation under this subsection and subsection F of this section, the~~
33 ~~number to be interviewed shall be at least three and not more than the number~~
34 ~~of contracts plus two.~~

35 ~~4. A purchasing agency may procure multiple contracts under a single~~
36 ~~request for qualifications procurement process under this subsection or, for~~
37 ~~job-order contracting construction services or design-build construction~~
38 ~~services, under a single request for qualifications and request for proposals~~
39 ~~procurement process under this subsection and subsection F of this section.~~
40 ~~If a purchasing agency does this:~~

41 ~~(a) The advertisement and the request for qualifications shall state~~
42 ~~that multiple contracts may or will be awarded, shall state the number of~~
43 ~~contracts that may or will be awarded and shall describe the services to be~~
44 ~~performed under each contract.~~

1 ~~(b) There shall be a single selection process for all of the multiple~~
2 ~~contracts, except that for each contract there shall be a separate final list~~
3 ~~and a separate negotiation under subsection E of this section or a separate~~
4 ~~request for proposals competition under subsection F of this section.~~
5 ~~However, if the request for qualifications specifies that all of the multiple~~
6 ~~contracts will be awarded to a single contractor, there may be a single final~~
7 ~~list and a single negotiation for all of the multiple contracts under~~
8 ~~subsection E of this section or a single request for proposals competition~~
9 ~~under subsection F of this section.~~

10 ~~(c) The purchasing agency may award all of the multiple contracts to~~
11 ~~one contractor or may award the multiple contracts to multiple contractors.~~

12 ~~5. For professional services, a purchasing agency may procure multiple~~
13 ~~contracts using a single request for qualifications solicitation under this~~
14 ~~subsection, except that professional services that are part of design-build~~
15 ~~construction services may not be procured under this paragraph. Each of the~~
16 ~~multiple contracts for professional services must have a term not exceeding~~
17 ~~five years and may continue in effect after the five year term for~~
18 ~~professional services on projects commenced within the five year term.~~

19 ~~6. For job order contracting construction services, a purchasing~~
20 ~~agency may procure multiple contracts using a single request for~~
21 ~~qualifications solicitation under this subsection or using a single request~~
22 ~~for qualifications and request for proposals solicitation under this~~
23 ~~subsection and subsection F of this section.~~

24 ~~7. For construction manager at risk construction services and for~~
25 ~~design-build construction services, a purchasing agency may procure multiple~~
26 ~~contracts using a single request for qualifications solicitation under this~~
27 ~~subsection or for design-build construction services using a single request~~
28 ~~for qualifications and request for proposals solicitation under this~~
29 ~~subsection and subsection F of this section but in either case only for a~~
30 ~~specific single project. Portions of the specific single project shall be~~
31 ~~allocated to separate contracts.~~

32 ~~8. For construction manager at risk construction services,~~
33 ~~design-build construction services and job order contracting construction~~
34 ~~services if the contract or contracts will be negotiated under subsection E~~
35 ~~of this section or for job order contracting construction services if the~~
36 ~~contract will be awarded pursuant to subsection F of this section:~~

37 ~~(a) The person or firm selected to perform the construction services~~
38 ~~must select subcontractors based on qualifications alone or on a combination~~
39 ~~of qualifications and price and shall not select subcontractors based on~~
40 ~~price alone. A qualifications and price selection may be a single step~~
41 ~~selection based on a combination of qualifications and price or a two step~~
42 ~~selection. In a two step selection, the first step shall be based on~~
43 ~~qualifications alone and the second step may be based on a combination of~~
44 ~~qualifications and price or on price alone.~~

1 ~~(b) The purchasing agency shall include in the request for~~
2 ~~qualifications either:~~

3 ~~(i) A requirement that each person or firm submit a proposed~~
4 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
5 ~~selection plan must select subcontractors based on qualifications alone or on~~
6 ~~a combination of qualifications and price and shall not select subcontractors~~
7 ~~based on price alone and, as a selection criteria under the request for~~
8 ~~qualifications, an evaluation of each person's or firm's proposed~~
9 ~~subcontractor selection plan.~~

10 ~~(ii) A subcontractor selection plan adopted by the purchasing agency~~
11 ~~that will apply to the person or firm that is selected to perform the~~
12 ~~construction services and that requires subcontractors to be selected based~~
13 ~~on qualifications alone or on a combination of qualifications and price and~~
14 ~~not based on price alone, a requirement that each person or firm must submit~~
15 ~~a description of the procedures it proposes to use to carry out the~~
16 ~~purchasing agency's subcontractor selection plan and, as a selection criteria~~
17 ~~under the request for qualifications, an evaluation of each person's or~~
18 ~~firm's proposed procedures to carry out the purchasing agency's subcontractor~~
19 ~~selection plan.~~

20 ~~(c) The purchasing agency shall include in its contract with the~~
21 ~~selected person or firm either:~~

22 ~~(i) If the purchasing agency included its subcontractor selection plan~~
23 ~~in the request for qualifications, the purchasing agency's subcontractor~~
24 ~~selection plan and the procedures proposed by the selected person or firm in~~
25 ~~submitting its qualifications with those modifications to the procedures as~~
26 ~~the purchasing agency and the selected person or firm agree.~~

27 ~~(ii) If the purchasing agency did not include its subcontractor~~
28 ~~selection plan in the request for qualifications, the subcontractor selection~~
29 ~~plan proposed by the selected person or firm in submitting its qualifications~~
30 ~~with those modifications as the purchasing agency and the selected person or~~
31 ~~firm agree.~~

32 ~~(d) In making the selection of subcontractors, the person or firm~~
33 ~~selected to perform the construction services shall use the subcontractor~~
34 ~~selection plan and any procedures included in its contract.~~

35 ~~9. The purchasing agency and the selection committee shall not request~~
36 ~~or consider fees, price, man hours or any other cost information at any point~~
37 ~~in the selection process under this subsection and subsection D of this~~
38 ~~section, including the selection of the persons or firms to be interviewed,~~
39 ~~the selection of the persons or firms to be on the final list, in determining~~
40 ~~the order of preference of persons or firms on the final list or for any~~
41 ~~other purpose in the selection process.~~

42 ~~10. For construction manager at risk construction services and~~
43 ~~design-build construction services, the contract or contracts under a single~~
44 ~~request for qualifications procurement process or for design-build~~

~~construction services a single request for qualifications and request for proposals procurement process shall be limited to a specific single project.~~

(c) IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST RANKING PERSON OR FIRM, THE PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING THAT IT IS NOT THE HIGHEST PERSON OR FIRM ON THE FINAL LIST OR THAT ANOTHER PERSON OR FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST:

(i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.

(ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT MADE SUBMITTALS.

(d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE PERSONS OR FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS OR FIRMS THAT THEY ARE NOT ON THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS ARE ON THE FINAL LIST:

(i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

(ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE SUBMITTALS.

D. The director shall award a ~~THE SINGLE contract for professional services or construction services to one of the persons or firms on the final list for that contract prepared pursuant to subsection C of this section~~ UNDER THE PROCUREMENT as provided in subsection E or F of this section, ~~except that:~~

1. ~~If only two persons or firms that the selection committee determines are qualified respond to the request for proposals pursuant to subsection F of this section or if one of the three persons or firms on the final list drops out of the selection process pursuant to subsection E or F of this section so that only two of the persons or firms on the final list remain, the purchasing agency, as the purchasing agency deems necessary or appropriate, may elect to proceed with the procurement process with the two persons or firms or elect to readvertise pursuant to subsection C of this section.~~

2. ~~If only one responsive and responsible person or firm responds to the request for qualifications for a contract or multiple contracts to be negotiated under subsection E of this section or if persons or firms withdraw from the procurement process so that only one responsive and responsible person or firm remains in the procurement process, the purchasing agency may award the contract or contracts to a single person or firm if the purchasing agency determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation.~~

1 E. ~~For each contract included in the request for qualifications,~~ THE
2 PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE
3 FINAL LIST AS FOLLOWS:

4 1. THE PROCUREMENT IS FOR A SINGLE CONTRACT FOR CONSTRUCTION SERVICES
5 OR PROFESSIONAL SERVICES, AND THERE IS ONE FINAL LIST.

6 2. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND
7 OTHER CONTRACT TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND
8 REASONABLE TO THE PROCUREMENT OFFICER. IN MAKING THIS DECISION, THE
9 PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE,
10 THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES OR CONSTRUCTION
11 SERVICES TO BE RENDERED.

12 3. The procurement officer shall enter into ~~separate~~ negotiations for
13 the contract with the highest qualified person or firm on the final list.
14 ~~for that contract determined pursuant to subsection C of this section for the~~
15 ~~professional services or construction services. However, if the request for~~
16 ~~qualifications is for multiple contracts and specifies that all of the~~
17 ~~multiple contracts will be awarded to a single contractor, there may be a~~
18 ~~single negotiation for all of the multiple contracts. The negotiations shall~~
19 ~~include consideration of compensation and other contract terms that the~~
20 ~~officer determines to be fair and reasonable to this state. In making this~~
21 ~~decision, the procurement officer shall take into account the estimated~~
22 ~~value, the scope, the complexity and the nature of the professional services~~
23 ~~or construction services to be rendered.~~

24 4. If the procurement officer is ~~unable~~ NOT ABLE to negotiate a
25 satisfactory contract with the highest qualified person or firm on the final
26 list, at compensation and on other contract terms the procurement officer
27 determines to be fair and reasonable to this state, the procurement officer
28 shall formally terminate negotiations with that person or firm. The
29 procurement officer ~~may~~ SHALL THEN undertake negotiations with the next most
30 qualified person or firm on the final list in sequence until an agreement is
31 reached or a determination is made to reject all persons or firms on the
32 final list. ~~If a contract for construction services is entered into pursuant~~
33 ~~to this subsection:~~

34 ~~1. If the contract is for construction manager at risk construction~~
35 ~~services and includes preconstruction services by the contractor or if the~~
36 ~~contract is for design build construction services, the purchasing agency~~
37 ~~shall enter into a written contract with the contractor for preconstruction~~
38 ~~services under which contract the purchasing agency shall pay the contractor~~
39 ~~a fee for preconstruction services in an amount agreed by the purchasing~~
40 ~~agency and the contractor, and the purchasing agency shall not request or~~
41 ~~obtain a fixed price or a guaranteed maximum price for the construction from~~
42 ~~the contractor or enter into a construction contract with the contractor~~
43 ~~until after the purchasing agency has entered into the written contract for~~
44 ~~preconstruction services and a preconstruction services fee.~~

1 ~~2. Construction shall not commence until the purchasing agency and~~
2 ~~contractor agree in writing on either a fixed price that the purchasing~~
3 ~~agency will pay for the construction to be commenced or a guaranteed maximum~~
4 ~~price for the construction to be commenced.~~

5 5. IF, IN A PROCUREMENT UNDER THIS SECTION, THE PROCUREMENT OFFICER
6 TERMINATES NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST AND COMMENCES
7 NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON THE FINAL LIST, THE PROCUREMENT
8 OFFICER SHALL NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A
9 CONTRACT FOR THE CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED BY
10 THE FINAL LIST WITH ANY PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE
11 PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS.

12 F. As an alternative to subsection E of this section, the procurement
13 officer may award A SINGLE CONTRACT FOR design-build construction services or
14 job-order-contracting construction services as follows:

15 1. The procurement officer shall use the selection committee appointed
16 for the request for qualifications pursuant to subsection C of this section.

17 2. The procurement officer shall issue a request for proposals to the
18 persons or firms on the final list developed pursuant to subsection C of this
19 section.

20 3. ~~For design-build construction services and job order contracting~~
21 ~~construction services,~~ The request for proposals shall include:

22 (a) The purchasing agency's project schedule and project final BUDGET
23 FOR design and construction budget or life cycle budget for a procurement
24 that includes maintenance services or operations services.

25 (b) A statement that the contract ~~or contracts~~ will be awarded to the
26 person or firm whose proposal receives the highest number of points under a
27 scoring method.

28 (c) A description of the scoring method, including a list of the
29 factors in the scoring method and the number of points allocated to each
30 factor. The factors in the scoring method shall MAY include:

31 (i) For design-build construction services only, demonstrated
32 compliance with the design requirements.

33 (ii) Offeror qualifications.

34 (iii) Offeror financial capacity.

35 (iv) Compliance with the purchasing agency's project schedule.

36 (v) For design-build construction services only, if the request for
37 proposals specifies that the purchasing agency will spend its project budget
38 and not more than its project budget and is seeking the best proposal for the
39 project budget, compliance of the offeror's price or life cycle price for
40 procurements that include maintenance services, operations services or
41 finance services with the purchasing agency's budget as prescribed in the
42 request for proposals.

43 (vi) For design-build construction services if the request for
44 proposals does not contain the specifications prescribed in item (v) and for
45 job-order-contracting construction services, the price or life cycle price

1 for procurements that include maintenance services, operations services or
2 finance services.

3 (vii) An offeror quality management plan.

4 (viii) Other evaluation factors THAT DEMONSTRATE COMPETENCE AND
5 QUALIFICATIONS FOR THE TYPE OF CONSTRUCTION SERVICES IN THE REQUEST FOR
6 PROPOSALS as determined by the purchasing agency, if any.

7 (d) For design-build construction services only, the design
8 requirements.

9 (e) A requirement that each offeror submit separately a technical
10 proposal and a price proposal and that the offeror's entire proposal be
11 responsive to the requirements in the request for proposals. For
12 design-build construction services, the price in the price proposal shall be
13 a fixed price or a guaranteed maximum price.

14 (f) A statement that in applying the scoring method the selection
15 committee will separately evaluate the technical proposal and the price
16 proposal and will evaluate and score the technical proposal before opening
17 the price proposal.

18 (g) If the purchasing agency conducts discussions pursuant to
19 paragraph 5 of this subsection, a statement that discussions will be held and
20 a requirement that each offeror submit a preliminary technical proposal
21 before the discussions are held.

22 4. If the purchasing agency determines to conduct discussions pursuant
23 to paragraph 5 of this subsection, each offeror shall submit a preliminary
24 technical proposal to the purchasing agency before those discussions are
25 held.

26 5. If determined by the purchasing agency and included by the
27 purchasing agency in the request for proposals, the selection committee shall
28 conduct discussions with all ~~persons or firms~~ OFFERORS that submit
29 preliminary technical proposals. Discussions shall be for the purpose of
30 clarification to assure ENSURE full understanding of, and responsiveness to,
31 the solicitation requirements. Offerors shall be accorded fair treatment
32 with respect to any opportunity for discussion and for clarification by the
33 owner. Revision of preliminary technical proposals shall be permitted after
34 submission of preliminary technical proposals and before award for the
35 purpose of obtaining best and final proposals. In conducting any
36 discussions, information derived from proposals submitted by competing
37 offerors shall not be disclosed to other competing offerors.

38 6. After completion of any discussions pursuant to paragraph 5 of this
39 subsection or if no discussions are held, each offeror shall submit
40 separately its final technical proposal and its price proposal.

41 7. Before opening any price proposal, the selection committee shall
42 open the final technical proposals, evaluate the final technical proposals
43 and score the final technical proposals using the scoring method in the
44 request for proposals. No other factors or criteria may be used in the
45 evaluation and scoring.

1 8. After completion of the evaluation and scoring of all final
2 technical proposals, the selection committee shall open the price proposals,
3 evaluate the price proposals, score the price proposals and complete the
4 scoring of the entire proposals using the scoring method in the request for
5 proposals. No other factors or criteria may be used in the evaluation and
6 scoring.

7 9. The procurement officer shall award the contract or contracts to
8 the responsive and responsible offeror whose proposal receives the highest
9 score under the method of scoring in the request for proposals. No other
10 factors or criteria may be used in the evaluation. BEFORE OR AT THE SAME
11 TIME AS THE PURCHASING AGENCY NOTIFIES THE WINNING OFFEROR THAT IT HAS WON,
12 THE PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OTHER OFFEROR EITHER
13 THAT THE OFFEROR HAS NOT WON OR THAT ANOTHER OFFEROR HAS WON.

14 10. The contract or contracts file shall contain the basis on which the
15 award is made, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED
16 UNDER SUBSECTION G OF THIS SECTION.

17 11. For design-build construction services only, the procurement
18 officer shall award a stipulated fee equal to a percentage, as prescribed in
19 the request for proposals, of the purchasing agency's project final BUDGET
20 FOR design and construction budget, as prescribed in the request for
21 proposals, but not less than two-tenths of one per cent of the project final
22 BUDGET FOR design and construction budget to each final list offeror who
23 provides a responsive, but unsuccessful, proposal. If the procurement
24 officer does not award a contract, all responsive final list offerors shall
25 receive the stipulated fee based on the purchasing agency's ~~estimate of the~~
26 project final BUDGET FOR design and construction budget as included in the
27 request for proposals. The procurement officer shall pay the stipulated fee
28 to each offeror within ninety days after the award of the initial contract or
29 the decision not to award a contract. In consideration for paying the
30 stipulated fee, the procurement officer may use any ideas or information
31 contained in the proposals in connection with any contract awarded for the
32 project, or in connection with a subsequent procurement, without any
33 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
34 Notwithstanding the other provisions of this paragraph, an ~~unsuccessful final~~
35 ~~list~~ offeror may elect to waive the stipulated fee. If an ~~unsuccessful final~~
36 ~~list~~ offeror elects to waive the stipulated fee, the purchasing agency may
37 not use ideas and information contained in the offeror's proposal, except
38 that this restriction does not prevent the purchasing agency from using any
39 idea or information if the idea or information is also included in a proposal
40 of an offeror that accepts the stipulated fee.

41 G. AT A MINIMUM, THE PURCHASING AGENCY SHALL RETAIN THE FOLLOWING FOR
42 EACH PROCUREMENT UNDER THIS SECTION:

43 1. FOR EACH REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS UNDER
44 SUBSECTION C OF THIS SECTION:

45 (a) IF INTERVIEWS WERE NOT HELD:

1 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
2 AND, IF DIFFERENT, THE SUBMITTAL OF THE PERSON OR FIRM WITH WHICH THE
3 PURCHASING AGENCY ENTERS INTO A CONTRACT.

4 (ii) THE FINAL LIST.

5 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
6 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
7 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

8 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
9 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
10 RANK OR SCORE.

11 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
12 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND
13 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
14 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE PURCHASING AGENCY,
15 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
16 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
17 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
18 PURCHASING AGENCY.

19 (b) IF INTERVIEWS WERE HELD:

20 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
21 LIST AND, IF DIFFERENT, ALL SUBMITTALS OF THE PERSON OR FIRM WITH WHICH THE
22 PURCHASING AGENCY ENTERS INTO A CONTRACT.

23 (ii) THE FINAL LIST.

24 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
25 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
26 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

27 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
28 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
29 SCORE.

30 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
31 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
32 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
33 WERE INTERVIEWED. AT THE ELECTION OF THE PURCHASING AGENCY, THIS
34 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
35 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
36 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
37 PURCHASING AGENCY.

38 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
39 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
40 BE INTERVIEWED.

41 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
42 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
43 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
44 LIST TO BE INTERVIEWED.

(viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE PURCHASING AGENCY, THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR THE INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE PURCHASING AGENCY.

2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION F OF THIS SECTION:

(a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND, IF DIFFERENT, THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM WITH WHICH THE PURCHASING AGENCY ENTERS INTO A CONTRACT.

(b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS INCLUDED IN THE REQUEST FOR PROPOSALS.

(c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

(d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE PURCHASING AGENCY, THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE PURCHASING AGENCY.

H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, until ~~award and execution of a contract by a~~ THE purchasing agency AWARDS A CONTRACT OR TERMINATES THE PROCUREMENT, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the purchasing agency in response to the request for qualifications PURSUANT TO SUBSECTION C OF THIS SECTION or contained in the proposals SUBMITTED PURSUANT TO SUBSECTION F OF THIS SECTION shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing SUBMITTERS AND offerors during the selection process. ~~The proposals shall be open to public inspection after the contract is awarded and the purchasing agency has executed the contract.~~

2. AFTER THE PURCHASING AGENCY AWARDS THE CONTRACT OR TERMINATES THE PROCUREMENT, THE PURCHASING AGENCY SHALL MAKE AVAILABLE TO THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A MINIMUM ALL OF THE ITEMS THAT

1 THE PURCHASING AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS
2 SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR
3 PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND THE DOCUMENT OR DOCUMENTS
4 PRESCRIBED IN SUBSECTION G, PARAGRAPH 1, SUBDIVISION (a), ITEM (v) AND
5 SUBDIVISION (b), ITEMS (v) AND (viii) AND PARAGRAPH 2, SUBDIVISION (d) OF
6 THIS SECTION.

7 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
8 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
9 ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT. AT A MINIMUM THE
10 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING
11 AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE
12 AVAILABLE TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A
13 CONTRACT OR TERMINATED THE PROCUREMENT.

14 4. To the extent that the offeror designates and the purchasing agency
15 concurs, trade secrets and other proprietary data contained in a proposal
16 remain confidential.

17 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
18 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
19 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
20 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

21 ~~H.~~ I. A purchasing agency may cancel a request for qualifications or
22 a request for proposals, ~~or~~ reject in whole or in part any or all submissions
23 of qualifications or proposals OR DETERMINE NOT TO ENTER INTO A CONTRACT as
24 specified in the solicitation if it is in the best interest of the purchasing
25 agency. The purchasing agency shall make the reasons for cancellation, ~~or~~
26 rejection OR DETERMINATION NOT TO ENTER INTO A CONTRACT part of the contract
27 file.

28 ~~I. Notwithstanding any other law:~~

29 ~~1. The contractor for design-build or job order contracting~~
30 ~~construction services is not required to be registered to perform design~~
31 ~~services pursuant to title 32, chapter 1 if the person or firm actually~~
32 ~~performing the design services on behalf of the contractor is appropriately~~
33 ~~registered.~~

34 ~~2. The contractor for construction manager-at-risk, design-build or~~
35 ~~job order contracting construction services shall be licensed to perform~~
36 ~~construction pursuant to title 32, chapter 10.~~

37 ~~J. For job order contracting construction services only:~~

38 ~~1. The maximum dollar amount of an individual job order shall be one~~
39 ~~million dollars or such higher or lower amount prescribed by the director in~~
40 ~~a rule adopted pursuant to chapter 6 of this title as the maximum amount of~~
41 ~~an individual job order, except that:~~

42 ~~(a) The amount for school districts in rules adopted pursuant to~~
43 ~~section 15-213, subsection A shall be one million dollars or such higher or~~
44 ~~lower amount as adopted by the director.~~

1 ~~(b) Without affecting the scope of section 41-2501, subsection N or~~
2 ~~any similar provision, the maximum amount of an individual job order for the~~
3 ~~Arizona board of regents, the legislative and judicial branches of state~~
4 ~~government and the state compensation fund shall be one million dollars or~~
5 ~~such higher or lower amount adopted by the Arizona board of regents, the~~
6 ~~legislative or judicial branches of state government or the state~~
7 ~~compensation fund, respectively, either in an action noticed pursuant to~~
8 ~~title 38, chapter 3, article 3.1 or an adopted rule. Requirements shall not~~
9 ~~be artificially divided or fragmented in order to constitute a job order that~~
10 ~~satisfies this requirement.~~

11 ~~2. If the contractor subcontracts or intends to subcontract part or~~
12 ~~all of the work under a job order and if the job order construction services~~
13 ~~contract includes descriptions of standard individual tasks, standard unit~~
14 ~~prices for standard individual tasks and pricing of job orders based on the~~
15 ~~number of units of standard individual tasks in the job order:~~

16 ~~(a) The contractor has a duty to deliver promptly to each~~
17 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
18 ~~part of the work under one or more job orders:~~

19 ~~(i) A copy of the descriptions of all standard individual tasks on~~
20 ~~which the subcontractor is invited to bid.~~

21 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
22 ~~which the subcontractor is invited to bid.~~

23 ~~(b) If not previously delivered to the subcontractor, the contractor~~
24 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
25 ~~or that has agreed to do any of the work included in any job order:~~

26 ~~(i) A copy of the description of each standard individual task that is~~
27 ~~included in the job order and that the subcontractor is invited to perform.~~

28 ~~(ii) The number of units of each standard individual task that is~~
29 ~~included in the job order and that the subcontractor is invited to perform.~~

30 ~~(iii) The standard unit price for each standard individual task that~~
31 ~~is included in the job order and that the subcontractor is invited to~~
32 ~~perform.~~

33 ~~K. Notwithstanding anything to the contrary in this section or this~~
34 ~~title, a purchasing agency shall not:~~

35 ~~1. Enter into a contract as contractor to provide~~
36 ~~construction manager at risk construction services, design build construction~~
37 ~~services or job order contracting construction services.~~

38 ~~2. Contract with itself, with another purchasing agency, with this~~
39 ~~state or with any other governmental unit of this state or the federal~~
40 ~~government for the purchasing agency to provide construction manager at risk~~
41 ~~construction services, design build construction services or~~
42 ~~job order contracting construction services.~~

43 ~~L. The prohibitions prescribed in subsection K of this section do not~~
44 ~~prohibit a purchasing agency from providing construction for itself as~~
45 ~~provided by law.~~

1 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
2 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
3 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
4 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
5 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
6 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

7 M. K. For the purposes of this section, "professional services"
8 includes architect services, engineer services, landscape architect services,
9 assayer services, geologist services and land surveying services and any
10 combination of those services.

11 ~~N. The procurement officer shall include in each contract for~~
12 ~~construction services the full street or physical address of each separate~~
13 ~~location at which the construction will be performed and a requirement that~~
14 ~~the contractor and each subcontractor at any level include in each of its~~
15 ~~subcontracts the same address information. The contractor and each~~
16 ~~subcontractor at any level shall include in each subcontract the full street~~
17 ~~or physical address of each separate location at which construction work will~~
18 ~~be performed.~~

19 Sec. 25. Renumber

20 Sections 41-2579 and 41-2580, Arizona Revised Statutes, are renumbered
21 as sections 41-2582 and 41-2583.

22 Sec. 26. Title 41, chapter 23, article 5, Arizona Revised Statutes, is
23 amended by adding new sections 41-2579 and 41-2580 and section 41-2581, to
24 read:

25 41-2579. Procurement of multiple contacts for certain
26 job-order-contracting construction services and
27 certain professional services; definition

28 A. EXCEPT AS AUTHORIZED IN THIS SECTION AND IN SECTIONS 41-2535,
29 41-2536, 41-2537 AND 41-2581, A PURCHASING AGENCY SHALL NOT PROCURE IN A
30 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
31 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
32 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
33 PROCUREMENT. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION:

34 1. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
35 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

36 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
37 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
38 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

39 B. A PURCHASING AGENCY SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER
40 THIS SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED
41 COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR
42 CONSTRUCTION SERVICES PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

43 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

44 1. THE FOLLOWING REQUIREMENTS APPLY:

1 (a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT
2 REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT
3 ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION
4 D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE
5 INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN
6 DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR
7 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

8 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
9 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
10 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
11 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
12 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
13 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
14 ACTIONS.

15 (c) IF THE PURCHASING AGENCY ENTERS INTO THE NUMBER OF MULTIPLE
16 CONTRACTS BEING PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR
17 PROFESSIONAL SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT
18 TIME THE PURCHASING AGENCY MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL
19 LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT
20 WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

21 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
22 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
23 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

24 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
25 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
26 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
27 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
28 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
29 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
30 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
31 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

32 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
33 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO
34 SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE
35 PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE
36 PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND
37 RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT
38 TO PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR
39 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
40 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS
41 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
42 FOR A SOLICITATION.

43 (iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM
44 THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST
45 INTEREST OF THIS STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR

1 FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
2 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
3 COMMITTEE AS THE NEXT MOST QUALIFIED.

4 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
5 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
6 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
7 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
8 AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
9 SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
10 CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR
11 QUALIFICATIONS SHALL:

12 (a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR
13 WILL BE AWARDED:

14 (i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
15 SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE
16 PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING
17 CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT
18 MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED UNDER EACH OF THE
19 MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO
20 A SEPARATE PERSON OR FIRM.

21 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
22 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
23 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
24 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
25 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
26 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
27 FIRM.

28 (b) STATE AS TO FINAL LISTS:

29 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
30 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
31 LIST OF AT LEAST THREE AND NOT MORE THAN FIVE PERSONS OR FIRMS.

32 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR
33 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
34 OR FIRMS OR IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
35 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
36 SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST, WHICH
37 SHALL BE THE SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A
38 NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE THAN
39 FIVE.

40 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR DIFFERENT
41 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE
42 WILL BE A SEPARATE FINAL LIST FOR EACH TYPE OF PROFESSIONAL SERVICES AND THAT
43 THE NUMBER OF PERSONS OR FIRMS ON EACH FINAL LIST WILL BE THE NUMBER OF
44 CONTRACTS THAT MAY OR WILL BE AWARDED FOR EACH TYPE OF PROFESSIONAL SERVICES

1 AND A NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE
2 THAN FIVE.

3 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
4 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
5 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
6 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
7 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
8 PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.
9 ALL SELECTION CRITERIA UNDER THIS SUBSECTION SHALL BE FACTORS THAT
10 DEMONSTRATE COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL
11 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES INCLUDED IN THE
12 PROCUREMENT. IF:

13 (i) INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
14 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
15 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
16 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
17 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH
18 FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE FINAL LIST
19 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
20 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
21 INTERVIEWED. THE REQUEST FOR QUALIFICATIONS ALSO SHALL STATE WHETHER THE
22 PURCHASING AGENCY WILL SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND
23 THEIR ORDER ON THE FINAL LIST SOLELY THROUGH THE RESULTS OF THE INTERVIEW
24 PROCESS OR THROUGH THE COMBINED RESULTS OF BOTH THE INTERVIEW PROCESS AND THE
25 EVALUATION OF STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA SUBMITTED IN
26 RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR QUALIFICATIONS.

27 (ii) INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
28 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
29 BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND IN
30 DETERMINING THEIR ORDER ON EACH FINAL LIST.

31 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
32 SELECTION PROCESS:

33 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
34 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
35 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
36 PERSONS OR FIRMS.

37 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR
38 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
39 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR SIMILAR PROFESSIONAL
40 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS
41 WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF
42 PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
43 QUALIFICATIONS, SHALL BE DETERMINED BY THE PURCHASING AGENCY AND SHALL BE THE
44 SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT
45 IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE THAN FIVE.

1 (iii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR DIFFERENT
2 PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT
3 INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED
4 NUMBER OF PERSONS OR FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE
5 REQUEST FOR QUALIFICATIONS, SHALL BE DETERMINED BY THE PURCHASING AGENCY,
6 SHALL BE AT LEAST THREE TIMES THE NUMBER OF CONTRACTS THAT MAY OR WILL BE
7 AWARDED AND SHALL NOT BE MORE THAN FIVE TIMES THE NUMBER OF CONTRACTS THAT
8 MAY OR WILL BE AWARDED.

9 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
10 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
11 EITHER:

12 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
13 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
14 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
15 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
16 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

17 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
18 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
19 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS
20 TO BE SELECTED BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION OF
21 QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT
22 EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES
23 TO USE TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

24 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
25 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
26 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE
27 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
28 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

29 3. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
30 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH REQUEST FOR
31 QUALIFICATIONS. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL ENSURE
32 THAT THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
33 COMMITTEE. EACH SELECTION COMMITTEE MUST INCLUDE ONE EMPLOYEE OF THE
34 PURCHASING AGENCY OR A PURCHASING AGENCY REPRESENTATIVE APPOINTED BY THE
35 PURCHASING AGENCY. THE SAME SELECTION COMMITTEE SHALL FUNCTION AS TO ALL OF
36 THE MULTIPLE CONTRACTS INCLUDED IN THE PROCUREMENT. IF THE PURCHASING AGENCY
37 IS PROCURING MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES, THE PURCHASING
38 AGENCY SHALL DETERMINE THE NUMBER AND QUALIFICATIONS OF THE SELECTION
39 COMMITTEE MEMBERS. A SELECTION COMMITTEE FOR THE PROCUREMENT OF MULTIPLE
40 CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL HAVE NOT MORE
41 THAN SEVEN MEMBERS AND SHALL INCLUDE AT LEAST ONE PERSON WHO IS A SENIOR
42 MANAGEMENT EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON WHO IS AN
43 ARCHITECT OR ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE MEMBERS
44 MAY BE EMPLOYEES OF THE PURCHASING AGENCY OR OUTSIDE CONSULTANTS. OUTSIDE
45 CONTRACTORS, ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE ARE

1 NOT ENTITLED TO RECEIVE COMPENSATION FROM THE PURCHASING AGENCY FOR
2 PERFORMING THIS SERVICE, BUT THE PURCHASING AGENCY MAY ELECT TO REIMBURSE
3 OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS FOR TRAVEL, LODGING AND OTHER
4 EXPENSES INCURRED IN CONNECTION WITH SERVICE ON A SELECTION COMMITTEE. A
5 PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE SHALL NOT BE A CONTRACTOR
6 UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR PROVIDE ANY PROFESSIONAL
7 SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR OTHER SERVICES
8 UNDER THE CONTRACT. THE SELECTION COMMITTEE AND THE PURCHASING AGENCY SHALL
9 DO THE FOLLOWING:

10 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:

11 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
12 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
13 DATA THAT ARE SUBMITTED IN RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR
14 QUALIFICATIONS BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
15 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
16 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

17 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
18 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
19 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED
20 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE
21 PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED
22 THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE
23 USED TO SELECT THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR
24 ORDER ON EACH FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY
25 BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO
26 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

27 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
28 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
29 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
30 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
31 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
32 SERVICES.

33 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
34 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SUBSECTION FOR SELECTION OF
35 THE PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST,
36 THE SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST
37 AND IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT
38 WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR
39 FIRMS ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
40 MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE AWARDED TO
41 SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH TYPE OF
42 PROFESSIONAL SERVICES, AND IF A PERSON OR FIRM SUBMITTED QUALIFICATIONS FOR
43 MORE THAN ONE TYPE OF PROFESSIONAL SERVICES, THE PERSON OR FIRM MAY BE ON
44 MORE THAN ONE FINAL LIST.

1 (c) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION E OF THIS
2 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
3 PERSONS OR FIRMS ON EACH FINAL LIST THAT THEY ARE ON THAT FINAL LIST, THE
4 PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO THE FOLLOWING PERSONS OR FIRMS
5 THAT THEY ARE NOT ON THAT FINAL LIST:

6 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
7 FOR THAT FINAL LIST.

8 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
9 MADE SUBMITTALS FOR THAT FINAL LIST.

10 (d) IF THE CONTRACT WILL BE AWARDED UNDER SUBSECTION F OF THIS
11 SECTION, BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
12 PERSONS OR FIRMS ON THE FINAL LIST THAT THEY ARE ON THE FINAL LIST, THE
13 PURCHASING AGENCY SHALL SEND ACTUAL NOTICE TO EACH OF THE FOLLOWING PERSONS
14 OR FIRMS THAT THEY ARE NOT ON THE FINAL LIST OR THAT OTHER PERSONS OR FIRMS
15 ARE ON THE FINAL LIST:

16 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS OR FIRMS INTERVIEWED.

17 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS OR FIRMS THAT MADE
18 SUBMITTALS.

19 D. THE PURCHASING AGENCY SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN
20 THE REQUEST FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS
21 SECTION.

22 E. THE PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR
23 FIRMS ON THE FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE
24 CONSIDERATION OF COMPENSATION AND OTHER CONTRACT TERMS THAT THE PROCUREMENT
25 OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE. IN MAKING THIS
26 DECISION, THE PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED
27 VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES
28 OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE RENDERED. IF IN A
29 PROCUREMENT UNDER THIS SECTION THE PROCUREMENT OFFICER TERMINATES
30 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
31 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE PROCUREMENT OFFICER SHALL
32 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR
33 THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES
34 COVERED BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH
35 WHOM THE PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT
36 IS FOR:

37 1. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO A
38 SINGLE PERSON OR FIRM, THERE IS ONE FINAL LIST AND THE PROCUREMENT OFFICER
39 SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON
40 THE FINAL LIST. IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A
41 SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL
42 LIST, AT COMPENSATION AND ON OTHER CONTRACT TERMS THE PROCUREMENT OFFICER
43 DETERMINES TO BE FAIR AND REASONABLE, THE PROCUREMENT OFFICER SHALL THEN
44 UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE

1 FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS
2 MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

3 2. MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING CONSTRUCTION
4 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS OR FOR MULTIPLE CONTRACTS
5 FOR SIMILAR PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
6 THERE IS ONE FINAL LIST AND THE PROCUREMENT OFFICER SHALL ENTER INTO SEPARATE
7 NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED PERSONS
8 OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE AWARDED.
9 IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT
10 WITH A PERSON OR FIRM WITH WHOM THE PROCUREMENT OFFICER HAS COMMENCED
11 NEGOTIATIONS, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS
12 WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER SHALL THEN UNDERTAKE
13 NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON
14 THE FINAL LIST WITH WHOM THE PROCUREMENT OFFICER IS NOT THEN NEGOTIATING AND
15 WITH WHOM THE PROCUREMENT OFFICER HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE
16 UNTIL AN AGREEMENT IS REACHED FOR SOME OR ALL OF THE MULTIPLE CONTRACTS
17 INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A DETERMINATION IS MADE TO
18 REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

19 3. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
20 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE IS A SEPARATE FINAL LIST FOR EACH
21 TYPE OF PROFESSIONAL SERVICES AND THE PROCUREMENT OFFICER SHALL ENTER INTO
22 SEPARATE NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST QUALIFIED
23 PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS TO BE
24 AWARDED. IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A SATISFACTORY
25 CONTRACT WITH A PERSON OR FIRM WITH WHOM THE PROCUREMENT OFFICER HAS
26 COMMENCED NEGOTIATIONS, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE
27 NEGOTIATIONS WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER SHALL THEN
28 UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST QUALIFIED PERSON OR
29 FIRM ON THE FINAL LIST WITH WHOM THE PROCUREMENT OFFICER IS NOT THEN
30 NEGOTIATING AND WITH WHOM THE PROCUREMENT OFFICER HAS NOT PREVIOUSLY
31 NEGOTIATED IN SEQUENCE UNTIL AN AGREEMENT IS REACHED FOR SOME OR ALL OF THE
32 MULTIPLE CONTRACTS INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A
33 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

34 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE PURCHASING
35 AGENCY MAY AWARD MULTIPLE CONTRACTS FOR SIMILAR JOB-ORDER-CONTRACTING
36 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

37 1. THE PURCHASING AGENCY SHALL USE THE SELECTION COMMITTEE APPOINTED
38 FOR THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

39 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE
40 PERSONS OR FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS
41 SECTION.

42 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

43 (a) THE PURCHASING AGENCY'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET
44 FOR DESIGN AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT
45 INCLUDES MAINTENANCE SERVICES OR OPERATIONS SERVICES.

1 (b) A STATEMENT THAT THE MULTIPLE CONTRACTS WILL BE AWARDED TO A
2 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
3 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
4 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.

5 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
6 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
7 FACTOR. THE FACTORS IN THE SCORING METHOD MAY INCLUDE:

8 (i) OFFEROR QUALIFICATIONS.

9 (ii) OFFEROR FINANCIAL CAPACITY.

10 (iii) COMPLIANCE WITH THE PURCHASING AGENCY'S PROJECT SCHEDULE.

11 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
12 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.

13 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.

14 (vi) OTHER EVALUATION FACTORS THAT DEMONSTRATE COMPETENCE AND
15 QUALIFICATIONS FOR THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IN THE
16 REQUEST FOR PROPOSALS AS DETERMINED BY THE PURCHASING AGENCY, IF ANY.

17 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
18 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
19 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

20 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
21 COMMITTEE WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE
22 PROPOSAL AND WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING
23 THE PRICE PROPOSAL.

24 (f) IF THE PURCHASING AGENCY CONDUCTS DISCUSSIONS PURSUANT TO
25 PARAGRAPH 5 OF THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND
26 A REQUIREMENT THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL
27 BEFORE THE DISCUSSIONS ARE HELD.

28 4. IF THE PURCHASING AGENCY DETERMINES TO CONDUCT DISCUSSIONS PURSUANT
29 TO PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
30 TECHNICAL PROPOSAL TO THE PURCHASING AGENCY BEFORE THOSE DISCUSSIONS ARE
31 HELD.

32 5. IF DETERMINED BY THE PURCHASING AGENCY AND INCLUDED BY THE
33 PURCHASING AGENCY IN THE REQUEST FOR PROPOSALS, THE SELECTION COMMITTEE SHALL
34 CONDUCT DISCUSSIONS WITH ALL OFFERORS THAT SUBMIT PRELIMINARY TECHNICAL
35 PROPOSALS. DISCUSSIONS SHALL BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE
36 FULL UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS.
37 OFFERORS SHALL BE ACCORDED FAIR TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR
38 DISCUSSION AND FOR CLARIFICATION BY THE PURCHASING AGENCY. REVISION OF
39 PRELIMINARY TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER SUBMISSION OF
40 PRELIMINARY TECHNICAL PROPOSALS AND BEFORE AWARD FOR THE PURPOSE OF OBTAINING
41 BEST AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED
42 FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS SHALL NOT BE DISCLOSED TO
43 OTHER COMPETING OFFERORS.

1 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
2 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
3 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND ITS PRICE PROPOSAL.

4 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
5 OPEN THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS
6 AND SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE
7 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
8 EVALUATION AND SCORING.

9 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
10 TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE PRICE PROPOSALS,
11 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
12 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
13 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
14 SCORING.

15 9. THE PURCHASING AGENCY SHALL AWARD THE MULTIPLE CONTRACTS TO THE
16 RESPONSIVE AND RESPONSIBLE OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST
17 SCORES UNDER THE METHOD OF SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER
18 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION. BEFORE OR AT THE SAME
19 TIME AS THE PURCHASING AGENCY NOTIFIES THE WINNING OFFERORS THAT THEY HAVE
20 WON, THE PURCHASING AGENCY SHALL GIVE ACTUAL NOTICE TO EACH OTHER OFFEROR
21 EITHER THAT THE OFFEROR HAS NOT WON OR THAT OTHER OFFERORS HAVE WON.

22 10. THE CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
23 MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED UNDER
24 SUBSECTION G OF THIS SECTION.

25 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
26 THIS SECTION OR MULTIPLE REQUESTS FOR PROPOSALS UNDER SUBSECTION F OF THIS
27 SECTION, THE PURCHASING AGENCY SHALL RETAIN THE ITEMS IN PARAGRAPHS 1 AND 2
28 OF THIS SUBSECTION, AS APPLICABLE, FOR EACH FINAL LIST AND EACH REQUEST FOR
29 PROPOSALS PROCUREMENT PROCESS. AT A MINIMUM, THE PURCHASING AGENCY SHALL
30 RETAIN THE FOLLOWING FOR EACH PROCUREMENT UNDER THIS SECTION:

31 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
32 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

33 (a) IF INTERVIEWS WERE NOT HELD:

34 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
35 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING AGENCY
36 ENTERS INTO A CONTRACT.

37 (ii) THE FINAL LIST.

38 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
39 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
40 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

41 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
42 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
43 RANK OR SCORE.

44 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
45 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND

1 THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS
2 THAT SUBMITTED QUALIFICATIONS. AT THE ELECTION OF THE PURCHASING AGENCY,
3 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
4 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
5 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
6 PURCHASING AGENCY.

7 (b) IF INTERVIEWS WERE HELD:

8 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
9 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING
10 AGENCY ENTERS INTO A CONTRACT.

11 (ii) THE FINAL LIST.

12 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
13 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
14 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

15 (iv) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT WAS
16 INTERVIEWED AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL RANK OR
17 SCORE.

18 (v) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON EACH
19 SELECTION CRITERIA OF EACH PERSON OR FIRM THAT WAS INTERVIEWED AND THAT
20 SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR FIRMS THAT
21 WERE INTERVIEWED. AT THE ELECTION OF THE PURCHASING AGENCY, THIS
22 DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
23 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
24 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
25 PURCHASING AGENCY.

26 (vi) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
27 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE SHORT LIST TO
28 BE INTERVIEWED.

29 (vii) A LIST THAT CONTAINS THE NAME OF EACH PERSON OR FIRM THAT
30 SUBMITTED QUALIFICATIONS AND THAT SHOWS THE PERSON'S OR FIRM'S FINAL OVERALL
31 RANK OR SCORE IN THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE SHORT
32 LIST TO BE INTERVIEWED.

33 (viii) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE OR RANK ON
34 EACH SELECTION CRITERIA OF EACH PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS
35 AND THAT SUPPORT THE FINAL OVERALL RANKINGS AND SCORES OF THE PERSONS OR
36 FIRMS THAT SUBMITTED QUALIFICATIONS IN THE SELECTION OF THE PERSONS OR FIRMS
37 TO BE ON THE SHORT LIST TO BE INTERVIEWED. AT THE ELECTION OF THE PURCHASING
38 AGENCY, THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET
39 FOR THE ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS
40 FOR THE INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS
41 DETERMINED BY THE PURCHASING AGENCY.

42 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
43 F OF THIS SECTION:

1 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
2 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
3 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE PURCHASING
4 AGENCY ENTERS INTO A CONTRACT.

5 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
6 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
7 INCLUDED IN THE REQUEST FOR PROPOSALS.

8 (c) A LIST THAT CONTAINS THE NAME OF EACH OFFEROR THAT SUBMITTED A
9 PROPOSAL AND THAT SHOWS THE OFFEROR'S FINAL OVERALL SCORE.

10 (d) A DOCUMENT OR DOCUMENTS THAT SHOW THE FINAL SCORE ON EACH FACTOR
11 IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS OF EACH OFFEROR THAT
12 SUBMITTED A PROPOSAL AND THAT SUPPORT THE FINAL OVERALL SCORES OF THE
13 OFFERORS THAT SUBMITTED PROPOSALS. AT THE ELECTION OF THE PURCHASING AGENCY,
14 THIS DOCUMENTATION MAY BE IN THE FORM OF A CONSOLIDATED SCORING SHEET FOR THE
15 ENTIRE SELECTION COMMITTEE, IN THE FORM OF INDIVIDUAL SCORING SHEETS FOR
16 INDIVIDUAL SELECTION COMMITTEE MEMBERS OR ANY OTHER FORM AS DETERMINED BY THE
17 PURCHASING AGENCY.

18 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
19 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

20 1. NOTWITHSTANDING TITLE 39, CHAPTER 1, ARTICLE 2, UNTIL CONTRACT
21 AWARD BY A PURCHASING AGENCY OF ALL OF THE MULTIPLE CONTRACTS IN THE
22 PROCUREMENT OR TERMINATION OF THE PROCUREMENT BY THE PURCHASING AGENCY, ONLY
23 THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO
24 SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO THE PUBLIC AND ALL
25 OTHER INFORMATION RECEIVED BY THE PURCHASING AGENCY IN RESPONSE TO THE
26 REQUEST FOR QUALIFICATIONS UNDER SUBSECTION C OF THIS SECTION OR CONTAINED IN
27 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL BE CONFIDENTIAL
28 IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO
29 COMPETING SUBMITTERS AND OFFERORS DURING THE SELECTION PROCESS.

30 2. AFTER THE PURCHASING AGENCY AWARDS ALL OF THE MULTIPLE CONTRACTS IN
31 THE PROCUREMENT OR TERMINATES THE PROCUREMENT, THE PURCHASING AGENCY SHALL
32 MAKE AVAILABLE TO THE PUBLIC PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AT A
33 MINIMUM ALL OF THE ITEMS THAT THE PURCHASING AGENCY IS REQUIRED TO RETAIN
34 UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN
35 RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS SECTION AND
36 THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
37 SUBDIVISION (a), ITEM (v), AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
38 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION.

39 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
40 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
41 ENTERED INTO A CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT
42 OR THE PURCHASING AGENCY HAS TERMINATED THE PROCUREMENT. AT A MINIMUM THE
43 PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING
44 AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE
45 AVAILABLE TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A

1 CONTRACT FOR ALL OF THE CONTRACTS IN THE PROCUREMENT OR THE PURCHASING AGENCY
2 HAS TERMINATED THE PROCUREMENT.

3 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE PURCHASING AGENCY
4 CONCURS, TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL
5 REMAIN CONFIDENTIAL.

6 5. THE DOCUMENT OR DOCUMENTS PRESCRIBED IN SUBSECTION G, PARAGRAPH 1,
7 SUBDIVISION (a), ITEM (v) AND SUBDIVISION (b), ITEMS (v) AND (viii) AND
8 PARAGRAPH 2, SUBDIVISION (d) OF THIS SECTION ARE AVAILABLE TO THE EXTENT
9 PROVIDED IN TITLE 39, CHAPTER 1, ARTICLE 2.

10 I. THE PURCHASING AGENCY MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A
11 REQUEST FOR PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR
12 PROPOSALS OR DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE
13 CONTRACTS AS SPECIFIED IN THE SOLICITATION IF THE PURCHASING AGENCY
14 DETERMINES IN ITS ABSOLUTE AND SOLE DISCRETION THAT THE ACTION IS IN THE BEST
15 INTEREST OF THIS STATE. THE PURCHASING AGENCY SHALL MAKE THE REASONS FOR
16 CANCELLATION, REJECTION OR DETERMINATION NOT TO ENTER INTO CONTRACTS PART OF
17 THE CONTRACT FILE.

18 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
19 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
20 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
21 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
22 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
23 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

24 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
25 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
26 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
27 OF THOSE SERVICES.

28 41-2580. Requirements applicable to construction services and
29 professional services and to contracts for
30 construction services and professional services;
31 definition

32 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
33 ENTERED INTO AS THE RESULT OF A PROCUREMENT OF CONSTRUCTION SERVICES OR
34 PROFESSIONAL SERVICES UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578,
35 41-2579 OR 41-2581 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES
36 INCLUDED IN EACH PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537,
37 41-2578, 41-2579 OR 41-2581.

38 B. IF A PROCUREMENT UNDER SECTION 41-2578 IS FOR
39 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
40 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 41-2578,
41 SUBSECTION E OR IF A PROCUREMENT UNDER SECTION 41-2535, 41-2536 OR 41-2537 IS
42 FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
43 CONSTRUCTION SERVICES, THE PURCHASING AGENCY SHALL ENTER INTO A WRITTEN
44 CONTRACT WITH THE CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE
45 PURCHASING AGENCY SHALL PAY THE CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES

1 IN AN AMOUNT AGREED BY THE PURCHASING AGENCY AND THE CONTRACTOR, AND THE
2 PURCHASING AGENCY SHALL NOT REQUEST OR OBTAIN A FIXED PRICE OR A GUARANTEED
3 MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR OR ENTER INTO A
4 CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE PURCHASING AGENCY
5 HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND A
6 PRECONSTRUCTION SERVICES FEE.

7 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
8 RESULT OF A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578 OR
9 41-2579, CONSTRUCTION SHALL NOT COMMENCE UNTIL THE PURCHASING AGENCY AND
10 CONTRACTOR AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE PURCHASING
11 AGENCY WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM
12 PRICE FOR THE CONSTRUCTION TO BE COMMENCED. THE CONSTRUCTION TO BE COMMENCED
13 MAY BE THE ENTIRE PROJECT OR MAY BE ONE OR MORE PHASED PARTS OF THE PROJECT.

14 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
15 A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR
16 41-2581 SHALL HAVE A TERM NOT EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT
17 AWARD BY THE PURCHASING AGENCY OF THE FIRST CONTRACT UNDER THE PROCUREMENT,
18 EXCEPT THAT THE CONTRACT MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR
19 PROFESSIONAL SERVICES ON PROJECTS ON WHICH THE RENDERING OF PROFESSIONAL
20 SERVICES COMMENCES WITHIN THE FIVE YEAR TERM.

21 E. NOTWITHSTANDING ANY OTHER LAW:

22 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
23 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
24 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
25 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
26 REGISTERED.

27 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
28 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
29 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

30 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

31 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
32 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE PURCHASING
33 AGENCY IN AN ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A
34 RULE ADOPTED BY THE PURCHASING AGENCY AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL
35 JOB ORDER. REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN
36 ORDER TO CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

37 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
38 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
39 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
40 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
41 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
42 ORDER:

1 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
2 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
3 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

4 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
5 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

6 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
7 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

8 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
9 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
10 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

11 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
12 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

13 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
14 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

15 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
16 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
17 PERFORM.

18 G. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
19 TITLE, A PURCHASING AGENCY SHALL NOT:

20 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
21 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
22 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

23 2. CONTRACT WITH ITSELF, WITH ANOTHER PURCHASING AGENCY, WITH THIS
24 STATE OR WITH ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL
25 GOVERNMENT FOR THE PURCHASING AGENCY TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK
26 CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION SERVICES OR
27 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

28 H. THE PROHIBITIONS PRESCRIBED IN SUBSECTION G OF THIS SECTION DO NOT
29 PROHIBIT A PURCHASING AGENCY FROM PROVIDING CONSTRUCTION FOR ITSELF AS
30 PROVIDED BY LAW.

31 I. THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT FOR
32 CONSTRUCTION SERVICES THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE
33 LOCATION AT WHICH THE CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT
34 THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS
35 SUBCONTRACTS THE SAME ADDRESS INFORMATION. THE CONTRACTOR AND EACH
36 SUBCONTRACTOR AT ANY LEVEL SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET
37 OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL
38 BE PERFORMED.

39 J. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
40 PROCURED UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578 OR 41-2579:

41 1. THE CONTRACTOR PERFORMING THE CONSTRUCTION SERVICES IS PERMITTED TO
42 SELF-PERFORM PART OF THE CONSTRUCTION WORK, IF AND TO THE EXTENT AGREED IN
43 WRITING BY THE PURCHASING AGENCY AND THE CONTRACTOR. THE PURCHASING AGENCY
44 MAY USE METHODS OTHER THAN COMPETITIVE BIDDING TO ASSURE ITSELF THAT THE
45 PRICE THE PURCHASING AGENCY PAYS TO THE CONTRACTOR FOR SELF-PERFORMED WORK IS

1 FAIR AND REASONABLE. PERMITTED METHODS TO EVALUATE FAIRNESS AND
2 REASONABLENESS OF THE PRICE OF SELF-PERFORMED WORK INCLUDE EVALUATION OF THE
3 CONTRACTOR'S PROPOSED SCOPE OF WORK AND PRICE FOR SELF-PERFORMED WORK BY AN
4 ESTIMATOR WHO IS HIRED AND PAID BY THE PURCHASING AGENCY, WHO IS INDEPENDENT
5 OF THE CONTRACTOR AND WHO MAY BE AN EMPLOYEE OF THE PURCHASING AGENCY.
6 ALTHOUGH THE PURCHASING AGENCY MAY ELECT TO SO REQUIRE, NOTHING IN THIS TITLE
7 OR ANY OTHER LAW SHALL BE CONSTRUED OR INTERPRETED TO REQUIRE THE PURCHASING
8 AGENCY TO REQUIRE A CONTRACTOR DESIRING TO SELF-PERFORM PART OF THE
9 CONSTRUCTION WORK TO COMPETITIVELY BID THAT PART OF THE CONSTRUCTION WORK
10 AGAINST OTHER CONTRACTORS IN A BID COMPETITION.

11 2. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION WORK TO BE
12 PERFORMED BY SUBCONTRACTORS AND DO NOT APPLY TO CONSTRUCTION WORK THAT THE
13 PURCHASING AGENCY AND THE CONTRACTOR AGREE IN WRITING WILL BE SELF-PERFORMED
14 BY THE CONTRACTOR:

15 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
16 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
17 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
18 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
19 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
20 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
21 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
22 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

23 (b) THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT:

24 (i) IF THE PURCHASING AGENCY INCLUDED ITS SUBCONTRACTOR SELECTION PLAN
25 IN THE REQUEST FOR QUALIFICATIONS, THE PURCHASING AGENCY'S SUBCONTRACTOR
26 SELECTION PLAN AND THE PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S
27 SUBCONTRACTOR SELECTION PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN
28 SUBMITTING ITS QUALIFICATIONS WITH THOSE MODIFICATIONS TO THE PROCEDURES AS
29 THE PURCHASING AGENCY AND THE SELECTED PERSON OR FIRM AGREE.

30 (ii) IF THE PURCHASING AGENCY DID NOT INCLUDE ITS SUBCONTRACTOR
31 SELECTION PLAN IN THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION
32 PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS
33 WITH THOSE MODIFICATIONS AS THE PURCHASING AGENCY AND THE SELECTED PERSON OR
34 FIRM AGREE.

35 (c) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
36 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
37 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

38 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
39 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
40 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
41 OF THOSE SERVICES.

42 41-2581. Procurement of certain professional services

43 A. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION A SINGLE
44 CONTRACT OR MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES IF THE CONTRACT IS
45 FOR PROFESSIONAL SERVICES BY AN ARCHITECT OR ARCHITECT FIRM AND THE CONTRACT

1 AMOUNT IS TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS OR IF THE CONTRACT IS
2 FOR PROFESSIONAL SERVICES BY A PERSON OR FIRM OTHER THAN AN ARCHITECT AND THE
3 CONTRACT AMOUNT IS FIVE HUNDRED THOUSAND DOLLARS OR LESS. FOR SUCH
4 PROCUREMENTS, THE DIRECTOR SHALL ENCOURAGE PERSONS OR FIRMS ENGAGED IN THE
5 LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT ANNUALLY A STATEMENT OF
6 QUALIFICATIONS AND EXPERIENCE.

7 B. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
8 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH PROCUREMENT, WHICH MAY
9 INCLUDE ONE CONTRACT OR MULTIPLE CONTRACTS, PURSUANT TO RULES ADOPTED BY THE
10 DIRECTOR OR PURCHASING AGENCY. THE AMOUNT OF EACH CONTRACT IN A SINGLE
11 PROCUREMENT UNDER THIS SECTION SHALL NOT EXCEED THE DOLLAR AMOUNT LIMITS IN
12 SUBSECTION A. THE SELECTION COMMITTEE SHALL EVALUATE CURRENT STATEMENTS OF
13 QUALIFICATIONS AND EXPERIENCE ON FILE WITH THE DIRECTOR OR PURCHASING AGENCY,
14 TOGETHER WITH THOSE THAT MAY BE SUBMITTED BY OTHER PERSONS OR FIRMS REGARDING
15 THE PROCUREMENT. IF POSSIBLE AND PRACTICABLE, THE SELECTION COMMITTEE SHALL
16 CONDUCT INTERVIEWS REGARDING THE PROCUREMENT AND THE RELATIVE METHODS OF
17 FURNISHING THE REQUIRED SERVICES AND, IF POSSIBLE, SHALL SELECT, IN ORDER OF
18 PREFERENCE AND BASED ON CRITERIA ESTABLISHED AND PUBLISHED BY THE SELECTION
19 COMMITTEE, ONE OR MORE FINAL LISTS OF THE PERSONS OR FIRMS DEEMED TO BE THE
20 MOST QUALIFIED TO PROVIDE THE SERVICES REQUIRED. THE SELECTION COMMITTEE
21 SHALL BASE THE SELECTION OF EACH FINAL LIST AND THE ORDER OF PREFERENCE ON
22 DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY. THE PURCHASING AGENCY AND
23 THE SELECTION COMMITTEE SHALL NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS
24 OR ANY OTHER COST INFORMATION AT ANY POINT IN THE SELECTION PROCESS UNDER
25 THIS SECTION, INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE
26 INTERVIEWED, THE SELECTION OF THE PERSONS AND FIRMS TO BE ON A FINAL LIST, IN
27 DETERMINING THE ORDER OF PREFERENCE OF PERSONS AND FIRMS ON A FINAL LIST OR
28 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS. IF THE PROCUREMENT IS FOR:

29 1. A SINGLE CONTRACT OR IF THE PROCUREMENT IS FOR MULTIPLE CONTRACTS
30 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THERE SHALL BE ONE FINAL LIST OF
31 THREE PERSONS OR FIRMS.

32 2. MULTIPLE CONTRACTS FOR DIFFERENT PROFESSIONAL SERVICES TO BE
33 AWARDED TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE A SEPARATE FINAL LIST OF
34 THREE PERSONS OR FIRMS FOR EACH CONTRACT.

35 3. MULTIPLE CONTRACTS FOR THE SAME PROFESSIONAL SERVICES TO BE AWARDED
36 TO SEPARATE PERSONS OR FIRMS, THERE SHALL BE ONE FINAL LIST AND THE NUMBER OF
37 PERSONS OR FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF CONTRACTS PLUS
38 ANOTHER NUMBER THAT IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT
39 MORE THAN FIVE.

40 C. AFTER EACH FINAL LIST IS SELECTED PURSUANT TO SUBSECTION B, THE
41 PROCUREMENT OFFICER SHALL ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED
42 PERSON OR FIRM ON EACH FINAL LIST OR, IN THE CASE OF A SINGLE FINAL LIST FOR
43 MULTIPLE CONTRACTS FOR THE SAME PROFESSIONAL SERVICES TO BE AWARDED TO
44 SEPARATE PERSONS OR FIRMS, THE PURCHASING AGENCY SHALL ENTER INTO
45 NEGOTIATIONS WITH A NUMBER OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON THE

1 FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED. THE
2 NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND OTHER CONTRACT
3 TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO
4 THIS STATE. IN MAKING THIS DETERMINATION, THE PROCUREMENT OFFICER SHALL TAKE
5 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
6 THE PROFESSIONAL SERVICES TO BE RENDERED. IF THE PROCUREMENT OFFICER IS
7 UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON OR FIRM WITH WHICH
8 THE PURCHASING AGENCY IS NEGOTIATING AT A PRICE AND ON OTHER CONTRACT TERMS
9 THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE,
10 THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT
11 PERSON OR FIRM. THE PROCUREMENT OFFICER MAY UNDERTAKE NEGOTIATIONS WITH THE
12 NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN SEQUENCE UNTIL AN
13 AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR
14 FIRMS ON THE FINAL LIST. IF THE PROCUREMENT OFFICER TERMINATES NEGOTIATIONS
15 WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS WITH ANOTHER
16 PERSON OR FIRM ON THE FINAL LIST, THE PROCUREMENT OFFICER SHALL NOT IN THAT
17 PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO THE SINGLE CONTRACT OR
18 MULTIPLE CONTRACTS FOR THE PROFESSIONAL SERVICES COVERED BY THAT FINAL LIST
19 WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE PROCUREMENT OFFICER
20 HAS TERMINATED NEGOTIATIONS.

21 D. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
22 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
23 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
24 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
25 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
26 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

27 Sec. 27. Section 41-2582, Arizona Revised Statutes, as renumbered by
28 this act, is amended to read:

29 41-2582. Project delivery methods for design and construction
30 services

31 A. A purchasing agency may procure design services, construction and
32 construction services, as applicable, under any of the following project
33 delivery methods:

- 34 1. Design-bid-build.
- 35 2. Construction-manager-at-risk.
- 36 3. Design-build.
- 37 4. Job-order-contracting.

38 B. For the design-bid-build project delivery method, the director
39 shall procure:

- 40 1. Design services pursuant to section 41-2535, 41-2536, 41-2537,
41 41-2578, 41-2579 OR 41-2581.
- 42 2. Construction by competitive sealed bidding, except as otherwise
43 provided in section 41-2532.

1 C. The director shall procure construction services under the
2 construction-manager-at-risk, design-build and job-order-contracting project
3 delivery methods pursuant to section 41-2535, 41-2536, 41-2537, 41-2578 OR
4 41-2579.

5 D. The director shall procure design services relating to a
6 construction-manager-at-risk construction services project pursuant to
7 section 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR 41-2581.

8 E. For job-order-contracting construction services projects, if the
9 director does not include design services in the job-order-contracting
10 construction services contract, the director shall procure any design
11 services relating to job-order-contracting construction services projects
12 under the contract pursuant to section 41-2535, 41-2536, 41-2537, 41-2578,
13 41-2579 OR 41-2581.

14 Sec. 28. Section 41-2616, Arizona Revised Statutes, is amended to
15 read:

16 41-2616. Violation; classification; liability; civil penalty;
17 enforcement authority

18 A. A person who contracts for or purchases any material, services, ~~or~~
19 construction OR CONSTRUCTION SERVICES in a manner contrary to the
20 requirements of this chapter, the rules adopted pursuant to this chapter, the
21 rules adopted by the state board of education pursuant to section 15-213 or
22 rules adopted by the Arizona board of regents, the Arizona lottery commission
23 or the judicial branch pursuant to section 41-2501 is personally liable for
24 the recovery of all public monies paid plus twenty per cent of such amount
25 and legal interest from the date of payment and all costs and damages arising
26 out of the violation.

27 B. A person who intentionally or knowingly contracts for or purchases
28 any material, services, ~~or~~ construction OR CONSTRUCTION SERVICES pursuant to
29 a scheme or artifice to avoid the requirements of this chapter, rules adopted
30 pursuant to this chapter, rules adopted by the state board of education
31 pursuant to section 15-213 or rules adopted by the state board of regents,
32 the state lottery commission or the judicial branch pursuant to section
33 41-2501 is guilty of a class 4 felony.

34 C. A person who serves on an evaluation committee for a procurement
35 shall sign a statement before reviewing bids or proposals that the person has
36 no interest in the procurement other than that disclosed and will have no
37 contact with any representative of a competing vendor related to the
38 particular procurement during the course of evaluation of bids or proposals,
39 except those contacts specifically authorized by ~~sections~~ SECTION 41-2534,
40 41-2537, 41-2538, and 41-2578, 41-2579 OR 41-2581. The person shall disclose
41 on the statement any contact unrelated to the pending procurement that the
42 person may need to have with a representative of a competing vendor and any
43 contact with a representative of a competing vendor during evaluation of bids
44 or proposals except those contacts specifically authorized by ~~sections~~
45 SECTION 41-2534, 41-2537, 41-2538, and 41-2578, 41-2579 OR 41-2581. A person

1 who serves on an evaluation committee and who fails to disclose contact with
2 a representative of a competing vendor or who fails to provide accurate
3 information on the statement is subject to a civil penalty of at least one
4 thousand dollars but not more than ten thousand dollars.

5 D. The attorney general on behalf of this state shall enforce the
6 provisions of this chapter.

7 Sec. 29. Section 41-3506, Arizona Revised Statutes, as amended by Laws
8 2009, fourth special session, chapter 3, section 8, is amended to read:

9 41-3506. State web portal fund; exemption

10 A. The state web portal fund is established and is subject to
11 legislative appropriation. The government information technology agency
12 shall administer the fund. The state web portal fund shall consist of:

13 1. Monies appropriated to the fund by the legislature.

14 2. Any web portal usage fees collected under any agreement between
15 this state and an independent contractor providing services for the common
16 web portal LESS THE CONTRACTOR'S PRICE OF MAINTAINING AND OPERATING THE WEB
17 PORTAL.

18 3. Monies received from private grants or donations if designated for
19 the fund by the grantor or donor.

20 4. Monies received from the federal government by grant or otherwise
21 to assist this state in providing any common web portal projects.

22 B. Monies in the state web portal fund may be used for improving or
23 expanding this state's information technology services and projects,
24 including the common web portal.

25 C. IF THE STATE CHOOSES TO USE AN INDEPENDENT CONTRACTOR TO PROVIDE
26 SERVICES FOR THE STATE WEB PORTAL, THE SELECTION OF THE INDEPENDENT
27 CONTRACTOR MAY BE MADE USING A COMPETITIVE BID PROCESS.

28 ~~C.~~ D. Monies in the state web portal fund are exempt from the
29 provisions of section 35-190 relating to lapsing of appropriations.

30 Sec. 30. Title 48, chapter 1, Arizona Revised Statutes, is amended by
31 adding article 12, to read:

32 ARTICLE 12. PROCUREMENT OF DESIGN SERVICES
33 AND CONSTRUCTION SERVICES

34 48-281. Definitions

35 A. IN THIS ARTICLE, "PROFESSIONAL SERVICES" INCLUDES ARCHITECT
36 SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER SERVICES,
37 GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION OF THOSE
38 SERVICES.

39 B. IF A TERM IS USED IN THIS ARTICLE AND IS DEFINED IN SECTION 34-101
40 OR 34-601, THE TERM HAS THE SAME MEANING PRESCRIBED IN SECTION 34-101 OR
41 34-601.

42 48-282. Alternative methods for procurement of professional
43 services and construction services

44 A. AS AN ALTERNATIVE TO THE METHODS DESCRIBED IN THIS TITLE FOR THE
45 PROCUREMENT OF DESIGN SERVICES AND CONSTRUCTION, THE BOARD OF DIRECTORS OR

1 OTHER GOVERNING BODY OF A SPECIAL TAXING DISTRICT ESTABLISHED UNDER THIS
2 TITLE MAY ELECT TO PROCURE:

3 1. CONSTRUCTION UNDER THE DESIGN-BID-BUILD PROJECT DELIVERY METHOD BY
4 COMPETITIVE SEALED BIDDING PURSUANT TO TITLE 34, CHAPTER 2, ARTICLES 1, 2 AND
5 3 OR PURSUANT TO RULES ADOPTED BY THE SPECIAL TAXING DISTRICT PURSUANT TO
6 SECTION 41-2501, SUBSECTION C.

7 2. CONSTRUCTION SERVICES UNDER THE CONSTRUCTION-MANAGER-AT-RISK,
8 DESIGN-BUILD AND JOB-ORDER-CONTRACTING PROJECT DELIVERY METHODS PURSUANT TO
9 TITLE 34, CHAPTER 6.

10 3. PROFESSIONAL SERVICES PURSUANT TO TITLE 34, CHAPTER 1, ARTICLE 1 OR
11 TITLE 34, CHAPTER 6.

12 B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF PROFESSIONAL
13 SERVICES OR CONSTRUCTION SERVICES ARE PROCURED PURSUANT TO SUBSECTION A OF
14 THIS SECTION, ALL OF THE PROVISIONS AND REQUIREMENTS IN TITLE 34, CHAPTER 1,
15 ARTICLE 1 AND TITLE 34, CHAPTER 6 APPLY TO THE PROCUREMENT AND PERFORMANCE OF
16 THE PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES, INCLUDING PROVISIONS AND
17 REQUIREMENTS ON PAYMENTS, BID SECURITY, PAYMENT AND PERFORMANCE BONDS,
18 RETENTION, EMERGENCY PROCUREMENTS, MULTITERM CONTRACTS, SUBCONTRACTOR
19 SELECTION AND HORIZONTAL CONSTRUCTION.

20 Sec. 31. Section 48-914, Arizona Revised Statutes, is amended to read:

21 48-914. Preliminary plans; estimate of cost; limitation on
22 assessment

23 Before passing the resolution of intention, ~~plans and specifications~~
24 THE ENGINEER SHALL PREPARE PRELIMINARY PLANS THAT SHOW THE LOCATION AND THE
25 TYPE AND CHARACTER OF THE PROPOSED IMPROVEMENTS and estimates of the cost and
26 expenses ~~thereof shall be prepared by the engineer~~ OF THE PROPOSED
27 IMPROVEMENTS and ~~filed~~ SHALL FILE THE PRELIMINARY PLANS with the clerk. The
28 assessment for any lot shall not exceed its proportion of the estimate.

29 Sec. 32. Title 48, chapter 6, article 1, Arizona Revised Statutes, is
30 amended by adding section 48-967, to read:

31 48-967. Alternate project delivery method; construction
32 projects; definition

33 A. IF THE ALTERNATIVE METHODS TO PROCURE PROFESSIONAL SERVICES AND
34 CONSTRUCTION SERVICES PURSUANT TO SECTION 48-282 ARE USED AND IF THE COSTS OF
35 THE PROJECT ARE TO BE ASSESSED TO PROPERTY IN THE DISTRICT, THE BOARD OF
36 DIRECTORS SHALL FOLLOW AS NEARLY AS PRACTICABLE THE PROCEDURES PROVIDED IN
37 THIS ARTICLE, EXCEPT:

38 1. DESIGN SERVICES AND PRECONSTRUCTION SERVICES MAY BE PERFORMED BY
39 ONE OR MORE PERSONS SELECTED UNDER SECTION 48-282 AND THE COMPENSATION OF ANY
40 PERSON SELECTED TO PROVIDE DESIGN SERVICES OR PRECONSTRUCTION SERVICES UNDER
41 THIS SECTION MAY BE INCLUDED AS AN INCIDENTAL EXPENSE OF THE PROJECT.

42 2. IN THE RESOLUTION OF INTENTION, THE BOARD OF DIRECTORS SHALL
43 DESCRIBE ITS INTENT TO USE AN ALTERNATE PROJECT DELIVERY METHOD PURSUANT TO
44 SECTION 48-282 AND SHALL GIVE NOTICE OF THAT INTENT IN THE NOTICE REQUIRED BY
45 SECTION 48-916.

1 3. THE SUPERINTENDENT IS NOT REQUIRED TO INVITE SEALED BIDS UNDER
2 SECTIONS 48-919 AND 48-922 OR PUBLISH OR POST NOTICE AT THE PASSAGE OF THE
3 RESOLUTION ORDERING THE WORK AND INVITING SEALED BIDS UNDER SECTION 48-919,
4 AND THE BOARD OF DIRECTORS IS NOT REQUIRED TO PROCESS BIDS OR AWARD THE
5 CONTRACT TO THE LOWEST AND BEST RESPONSIBLE BIDDER UNDER SECTION 48-922.

6 4. ALTERNATIVE PLANS MAY BE PROVIDED FOR THROUGH THE ALTERNATE
7 PROCUREMENT METHOD.

8 5. THE BOARD OF DIRECTORS MAY SELECT THE PROVIDER OF CONSTRUCTION
9 SERVICES, ENTER INTO A CONTRACT WITH THAT PROVIDER FOR PRECONSTRUCTION
10 SERVICES AND CONTRACT TO PAY FOR AND ACTUALLY PAY FOR PRECONSTRUCTION
11 SERVICES BEFORE THE ADOPTION OF THE RESOLUTION OF INTENTION OR THE RESOLUTION
12 ORDERING WORK, BUT IS NOT BOUND TO PAY FOR CONSTRUCTION AND SHALL NOT AGREE
13 TO A FIXED PRICE OR A GUARANTEED MAXIMUM PRICE BEFORE THE ADOPTION OF THE
14 RESOLUTION ORDERING THE IMPROVEMENT UNDER SECTION 48-919. AFTER ADOPTION OF
15 THE RESOLUTION ORDERING THE IMPROVEMENT, THE SUPERINTENDENT AND THE
16 CONTRACTOR SHALL DETERMINE A PROPOSED FIXED PRICE OR A PROPOSED GUARANTEED
17 MAXIMUM PRICE FOR THE CONSTRUCTION. THE NOTICE REQUIRED BY SECTION 48-923
18 SHALL BE PUBLISHED AFTER THE DETERMINATION AND SHALL INCLUDE THE PROPOSED
19 FIXED PRICE OR THE PROPOSED GUARANTEED MAXIMUM PRICE AND, IF ALTERNATIVE
20 PLANS HAVE BEEN PROVIDED FOR, THE NOTICE SHALL INCLUDE THE FIXED PRICE OR THE
21 GUARANTEED MAXIMUM PRICE FOR EACH ALTERNATIVE PLAN. WITHIN TWENTY DAYS AFTER
22 THE DATE OF THE FIRST PUBLICATION, IF NO OBJECTIONS HAVE BEEN FILED PURSUANT
23 TO SECTION 48-923, SUBSECTION B, THE DISTRICT MAY ACCEPT THE FIXED PRICE OR
24 THE GUARANTEED MAXIMUM PRICE. ANY CONTRACT FOR CONSTRUCTION IS VOID AND OF
25 NO EFFECT IF THE BOARD OF DIRECTORS UPHOLDS AN OBJECTION AND ABANDONS THE
26 PROCEEDING PURSUANT TO SECTION 48-923, SUBSECTION B, EXCEPT THAT ANY CONTRACT
27 FOR PRECONSTRUCTION SERVICES REMAINS IN FULL FORCE AND EFFECT. IF
28 ALTERNATIVE PLANS HAVE BEEN PROVIDED FOR AND THE NOTICE INCLUDES THE FIXED
29 PRICE OR THE GUARANTEED MAXIMUM PRICE FOR EACH ALTERNATIVE PLAN, AND IF,
30 WITHIN THE FIFTEEN DAY PERIOD AFTER THE DATE OF THE FIRST PUBLICATION, THE
31 OWNERS OF A MAJORITY OF THE FRONTAGE OF PROPERTY FRONTING THE PROPOSED
32 IMPROVEMENT, OR, IF THE COST OF THE IMPROVEMENT HAS BEEN MADE CHARGEABLE ON
33 AN ASSESSMENT DISTRICT, THE OWNERS OF A MAJORITY OF THE FRONTAGE OF PROPERTY
34 CONTAINED WITHIN THE LIMITS OF THE ASSESSMENT DISTRICT IN WRITING REQUIRE
35 THAT THE PROPOSED IMPROVEMENT BE CONSTRUCTED PURSUANT TO ANY PARTICULAR ONE
36 OF THE ALTERNATIVE PLANS, THE BOARD OF DIRECTORS SHALL SO DETERMINE, REQUIRE
37 AND ACCEPT THE FIXED PRICE OR THE GUARANTEED MAXIMUM PRICE FOR THAT
38 ALTERNATIVE.

39 6. THE ASSESSMENT SHALL NOT BE RECORDED UNTIL AFTER ACCEPTANCE OF THE
40 FIXED PRICE OR THE GUARANTEED MAXIMUM PRICE.

41 B. IF A TERM IS USED IN THIS SECTION AND IS DEFINED IN SECTION 34-101
42 OR 34-601, THE TERM HAS THE SAME MEANING PRESCRIBED IN SECTION 34-101 OR
43 34-601.

1 C. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
2 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
3 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
4 OF THOSE SERVICES.

5 Sec. 33. Section 48-2841, Arizona Revised Statutes, is amended to
6 read:

7 48-2841. Proposals; bond; award of contract; entering into
8 contract; liability on bond

9 A. If the board invites proposals for construction of the flood
10 protection facility, written and signed proposals shall be submitted
11 accompanied by a bond payable to the flood protection district in an amount
12 of at least ten per cent of the aggregate proposal.

13 B. The board, in open session, shall examine and publicly declare the
14 proposals. The board may reject any proposals if deemed for the public good
15 and shall reject all proposals other than the lowest and best proposal of a
16 responsible bidder. The board may award the contract for the improvement to
17 the lowest and best responsible bidder at the price named in that bidder's
18 proposal on a motion, noted in its minutes, approved by a majority vote of
19 its members.

20 C. Notice of the award of the contract shall be published twice in a
21 daily newspaper or once in a weekly or semiweekly newspaper of general
22 circulation in the county.

23 D. At any time within fifteen days after the date of the first
24 publication, a person having an interest in a lot, acre or parcel liable for
25 an assessment who claims that any of the previous acts or proceedings
26 relating to the improvement are irregular, illegal or faulty may file with
27 the board a written notice specifying in what respect the acts and
28 proceedings are irregular, illegal or faulty. All objections to any act or
29 proceeding that are taken before the first publication of the notice of the
30 award are deemed to be waived, except as to matters directly affecting the
31 authority of the board. If the board finds any objection to be valid, it may
32 abandon the proceedings, correct or modify any portion of the proceedings or
33 proceed as in the first instance.

34 E. Within twenty days after the date of the first publication, if no
35 objections have been filed, the successful bidder shall enter into a contract
36 to make the improvement according to its bid. If objections are filed but
37 are rejected by the board, the contract shall be entered into within five
38 days after receiving notice from the board of that rejection. If the bidder
39 fails to enter into the contract within that period, the board, without
40 further proceedings, shall advertise for proposals in the same manner as for
41 the initial proposals. A bidder who fails to enter into the contract is
42 liable on the bidder's bond accompanying the proposal for all costs and
43 damages incurred and sustained by reason of the failure to enter into the
44 contract.

1 F. If the board determines that contracting services for construction
2 of the flood protection facility should be procured pursuant to title 34,
3 chapter 6, article 1, before executing the contract pursuant to section
4 ~~34-607~~ 34-609, the board shall formally approve the form of contract and
5 award the contract to the selected person or firm on a motion, noted in its
6 minutes and approved by a majority vote of its members.

7 G. Notice of the award of the contract shall be published twice in a
8 daily newspaper or once in a weekly or semiweekly newspaper of general
9 circulation in the county. The notice of award shall specifically state the
10 type of contract and that the contract was procured pursuant to title 34,
11 chapter 6, article 1 without competitive bidding.

12 H. At any time within fifteen days after the date of the first
13 publication, any person or entity that participated in the procurement
14 process that selected the person or entity to whom such contract was awarded,
15 or a person having an interest in a lot, acre or parcel liable for an
16 assessment who claims that any of the previous acts or proceedings relating
17 to the improvement or the procurement of contracting services are irregular,
18 illegal or faulty, may file with the board a written notice specifying in
19 what respect the acts and proceedings are irregular, illegal or faulty. All
20 objections to any act or proceeding that are not made before the notice of
21 the award are deemed to be waived, except as to matters directly affecting
22 the authority of the board. If the board finds any objection to be valid, it
23 may abandon the proceedings, correct or modify any portion of the proceedings
24 or proceed as in the first instance.

25 I. Within twenty days after the date of the first publication, if no
26 objections have been filed, the person or entity to whom contracting services
27 have been awarded shall enter into a contract to construct the flood
28 protection facility according to its proposal. If objections are filed but
29 are rejected by the board, the contract shall be entered into within five
30 days after receiving notice from the board of the rejection. If the person
31 or entity to whom contracting services have been awarded fails to enter into
32 the contract within that period, the board without further proceedings shall
33 either advertise for proposals, negotiate a contract with one of the other
34 persons or entities that participated in the procurement process or
35 reinstitute the process for procurement of contracting services pursuant to
36 title 34, chapter 6, article 1. The person or entity that failed to enter
37 into the contract is liable for all costs and damages incurred and sustained
38 by reason of that failure.

39 Sec. 34. Section 48-2851, Arizona Revised Statutes, is amended to
40 read:

41 48-2851. List of unpaid assessments; issuance of bonds;
42 denominations; due date; certificate of completion

43 A. After the prescribed time from the date of the warrant has expired
44 and after the flood protection district has recorded the return, the board
45 shall make and certify a complete list of all unpaid assessments.

1 B. If any person, before certification of the list, presents to the
2 board an affidavit that the person is the owner of a lot, acre or parcel on
3 the list, accompanied by the certificate of a searcher of record that the
4 person is the owner of record, and notifies the board, in writing, that the
5 owner desires no bond to be issued for the assessment on the lot, acre or
6 parcel, the assessment shall not be included in the list and shall remain
7 collectible as provided in this article. The failure to file the notice bars
8 any defense against the bonds except for the defense that the board did not
9 have authority to issue the bonds.

10 C. The clerk shall present the list to the district at its next
11 meeting after the return has been recorded. At any time after awarding a
12 contract for construction or acquisition, the district, by resolution, may
13 direct improvement bonds to be issued in an amount that does not exceed the
14 amount of unpaid assessments as may be shown on the certified list of unpaid
15 assessments. The resolution shall prescribe the maximum number and
16 denomination of the bonds and the times when payable, which shall be fixed so
17 that an approximately equal amount of principal is paid each year or any
18 approximately equal aggregate amount of principal and interest is paid each
19 year until the whole amount is paid. The bonds shall mature in a period that
20 does not exceed forty years and three months from the date of the bonds. The
21 denominations of the bonds shall be fixed by the district. The district may
22 provide in the form of the bond for redemption before maturity by giving such
23 notice as the district determines to be reasonable and by the payment of a
24 premium at redemption if the district determines a premium is advisable. The
25 resolution shall also fix the place, if any, other than the office of the
26 treasurer, at which the bonds and the interest are payable. The board may
27 issue fully registered bonds and may issue bonds registered in the nominee
28 name of a depository to provide for a book entry system to administer
29 registration and payment of principal, premium, if any, and interest on the
30 bonds.

31 D. The bonds shall be issued as of the date determined by the district
32 and shall bear interest from that date at the rate not to exceed that
33 specified in the resolution of intention. The bonds shall have semiannual
34 interest payments, the first of which is payable on January 1 or July 1, as
35 the case may be, occurring at least ninety days after the later of the date
36 of the bond or the expected completion of the work, and shall be for the
37 interest accrued at that time.

38 E. The due date of all bonds is January 1 or July 1, as stated on the
39 face of the bonds, in the years in which they become due, respectively.

40 F. The district may sell the bonds at public or private sale at a
41 price at, above or below par and accrued interest to the date of payment, and
42 at an interest rate not exceeding the maximum rate set in the resolution of
43 intention. If deemed necessary by the board of directors, a reserve fund may
44 be established either with proceeds from the sale of the bonds or by
45 increasing the collections of the annual installments of principal up to the

1 first ten years the bonds are outstanding, over and above the amounts
2 required to pay maturing principal on the bonds. The monies in the reserve
3 fund may be used only to cure deficits in the principal and interest funds or
4 to pay interest and principal on the final maturity or maturities of the
5 bonds.

6 G. The proceeds from the sale of the bonds shall be placed in a
7 special fund to be held by the treasurer and to be used to pay incidental
8 expenses and payments for construction or acquisition. If the district
9 received sealed proposals for construction of the flood protection facility,
10 the proceeds from the sale of the bonds shall be used to make semimonthly or
11 monthly payments to the contractor on a basis of ninety per cent of the value
12 of the work actually performed as estimated by the district or engineer
13 employed for those purposes to and including the fifteenth or last day of
14 each calendar month. The balance shall be paid after the district has
15 recorded a certificate of substantial completion of the flood protection
16 facility, in the same manner as the recording of the assessment. The
17 district shall record the certificate only after the work has been completed
18 to its satisfaction.

19 H. If contracting services are procured pursuant to title 34, chapter
20 6, article 1, proceeds from the sale of the bonds shall be used to make
21 monthly progress payments to the contractor as provided in section ~~34-607~~
22 34-609, subsection B except that notwithstanding any provision of title 34,
23 the balance shall be paid after the work is substantially complete and the
24 district has recorded a certificate of substantial completion of the flood
25 protection facility in the same manner as the recording of the assessment.

26 I. The district shall mail a copy of the notice of completion to each
27 property owner in the same manner as the notice of hearing on the assessment.
28 Pending use of the bond proceeds, the treasurer may invest the proceeds in
29 any investments for which sinking funds of this state may be invested or in a
30 pooled investment fund established under section 35-326, except that if bond
31 anticipation notes have been issued, the bond proceeds or so much as is
32 necessary shall be used to redeem the notes.

33 J. Refunding bonds may be issued to refund all or any portion of an
34 issue of bonds issued and sold pursuant to this section in the manner
35 prescribed by title 35, chapter 3, article 4.

36 Sec. 35. Laws 2009, chapter 187, section 62 is amended to read:

37 Sec. 62. Construction-manager-at-risk contracts; requests for
38 qualification; price competition; delayed repeal

39 A. Notwithstanding any other law, if the American recovery and
40 reinvestment act of 2009 (P.L. 111-5) is a source of monies for a
41 construction project and price competition is required by the funding federal
42 agency or by applicable federal law, price competition may be included as
43 part of the selection criteria in a request for qualifications selection
44 process for a construction-manager-at-risk contract to be negotiated as
45 follows:

1 1. By the department of transportation under section 28-7366,
2 subsection E, Arizona Revised Statutes, if the request for qualifications is
3 issued by the department of transportation on or before December 31, 2014.

4 2. By an agent under section 34-602, Arizona Revised Statutes, if the
5 request for qualifications is issued by the agent on or before December 31,
6 2014.

7 3. By a purchasing agency under section ~~41-2579~~ 41-2582, Arizona
8 Revised Statutes, if the request for qualifications is issued on or before
9 December 31, 2014.

10 B. This section is repealed from and after September 30, 2015.

11 Sec. 36. Existing and future procurements

12 A. Any procurement that is conducted under any section of the Arizona
13 Revised Statutes that is amended by this act or that is conducted under any
14 rule, regulation or policy that is based on any section of the Arizona
15 Revised Statutes that is amended by this act and that is commenced by the
16 Arizona department of transportation under title 28, Arizona Revised
17 Statutes, an agent under title 34, Arizona Revised Statutes, a purchasing
18 agency under title 41, Arizona Revised Statutes, a school district or any
19 other public entity by publication of notice or issuance of a request for
20 qualifications before the effective date of this act shall be continued and
21 completed under the law in effect before the effective date of this act.

22 B. Any procurement that is conducted under any section of the Arizona
23 Revised Statutes that is amended by this act or that is conducted under any
24 rule, regulation or policy that is based on any section of the Arizona
25 Revised Statutes that is amended by this act and that is commenced by the
26 Arizona department of transportation under title 28, Arizona Revised
27 Statutes, an agent under title 34, Arizona Revised Statutes, a purchasing
28 agency under title 41, Arizona Revised Statutes, a school district or any
29 other public entity by publication of notice or issuance of a request for
30 qualifications after the effective date of this act shall be conducted
31 pursuant to the law as amended by this act, regardless of whether any
32 applicable rule, regulation or policy applicable to the Arizona department of
33 transportation, the agent, the purchasing agency, the school district or
34 other public entity has been amended to conform to the law as amended by this
35 act.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.